Enforcing the Immigration Act 2009
Employers and Carriers
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INTRODUCTION

The Immigration Act 2009 sets out a number of immigration obligations on employers and carriers\(^1\). Immigration is vital to the functioning of our economy and it is important that sector groups have a clear understanding of their obligations. While the vast majority of organisations and individuals comply with immigration laws, there are instances where the Department of Labour (the Department) must take action to address non-compliance (innocent or fraudulent) to ensure the integrity of the immigration system.

Within the Department, Immigration New Zealand (INZ) is responsible for the operational administration of immigration law.

INZ’s approach to enforcement of employer and carrier obligations places emphasis on voluntary compliance and building of collaborative relationships, while retaining flexibility and discretion to use a range of tools to counter non-compliance with obligations. This enforcement approach provides a clear and consistent framework for the principled application of immigration legislation through enforcement.

This document outlines the principles that govern INZ’s enforcement policies in relation to employers and carriers, and outlines the support available to organisations and individuals who may require assistance in resolving compliance issues.

While it is important that our enforcement approach is informed by a consistent set of principles, it is also equally important that they are not set in concrete. We need to have the capacity to adapt policy to changing circumstances and needs of our clients. This is a living document and will be subject to periodic review.

ADMINISTRATION OF IMMIGRATION LAW

The document sets out the Department’s approach to enforcing immigration law in respect of employers and carriers. Immigration law applies to foreign nationals in New Zealand or wanting to come to New Zealand. It may also impact on their sponsors, family members and advisers, and others who come into contact with the immigration system, including New Zealand citizens.

This document details why and how INZ ensures compliance with immigration law in the employment and carrier sectors. This will assist individuals and our key partners and stakeholders to understand their responsibilities and INZ’s expectations for compliance with immigration obligations.

This document complements other information and support services available for people and sectors with immigration obligations.

This document is also supported by a range of internal operational policies and procedures relating to enforcement.

\(^1\) Carriers: the owner or charterer of a craft, including any New Zealand agent, or the person in charge of a craft. A craft is an aircraft, ship or other vehicle or vessel transporting people to or from New Zealand.
THE DEPARTMENT OF LABOUR’S ENFORCEMENT PRINCIPLES

When making judgements and choices about enforcement options when an individual or organisation breaches their immigration obligations, we are guided by a framework of policies and procedures, and the following principles:

Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. We will respond consistently when dealing with similar cases but our approach will also reflect the specific circumstances of each case.

Proportionality

Our enforcement response will be proportionate to the breach of immigration law. This means that the enforcement response will reflect factors such as the seriousness, scale, repetitive nature or economic cost of the breach, and whether the risk or actual harm to our country or to individuals is significant.

Public accountability

Our enforcement response will address the public’s requirement for accountability where there has been a breach of immigration law. Where a breach causes significant risk or actual harm to individuals or to New Zealand’s security or other interests, INZ is likely to pursue prosecution.

Fairness

Our enforcement responses will be fair, impartial and undertaken with the highest integrity. We will ensure our decision-making is reasonable (given the circumstances of a particular case), unbiased, and conforms to the principles of natural justice.

Prioritisation

We may target or focus our resources on particular activities or sectors, where it is considered appropriate because of the nature of a problem, or to ensure our resources can be used with maximum effect.

Openness and accountability

We will ensure our expectations are clear. We will also assist people affected by immigration obligations to understand our approach to enforcement and provide opportunities for them to ask questions.

Innovation and responsiveness

Through our approach to enforcement, INZ seeks to ensure sustained individual behaviour that is highly consistent with immigration law. As appropriate, INZ will look to use new and innovative tools or methods to achieve behavioural change. This may include the involvement of other branches of the Department, or other Government agendas.
NON-COMPLIANCE WITH IMMIGRATION OBLIGATIONS

The Department appreciates that the vast majority of individuals and organisations willingly comply with their immigration obligations.

A small proportion of individuals or organisations need extra assistance to comply, either because they are unaware of their obligations, or find compliance a burden. With engagement and encouragement they can be influenced to change their behaviour.

A minority of individuals or organisations refuse to take steps to avoid breaches, deliberately breach their obligations or otherwise commit offences against immigration law. Such individuals or organisations can expect to face sanctions from INZ. INZ expects sanctions to have a deterrent effect on both the party being sanctioned and others in that sector or in similar circumstances.

INZ’s approach to enforcement decision-making

INZ’s approach to enforcement decision-making emphasises voluntary compliance and collaborative relationships, while retaining flexibility and discretion to use a range of tools to counter non-compliance with obligations. We therefore aim to use the minimum enforcement necessary to obtain compliance in an individual case, while aiming to influence behaviour towards ongoing compliance in the future.

- **Provision of information**

INZ has a range of information and tools that people can access to help them to understand and comply with their obligations under immigration law. We see this as a crucial part of the reciprocal relationship we have with our stakeholders.

- **Negotiated outcomes**

Where an individual or organisation breaches their obligations, our initial response to non-compliance might not always involve the use of any of our statutory enforcement tools. We will generally support anyone who demonstrates a genuine willingness to comply with their immigration obligations, and in some circumstances where the non-compliance is of a less serious nature, we might negotiate a mutually acceptable outcome with them. For an employer or carrier, our first step may be to advise them about systems that they can set up to avoid a repeat of the same situation.

- **Enforcement**

Where there are indicators of consistent breaches of immigration law or organised, systemic non-compliance, INZ will use any appropriate enforcement sanctions available under the Act. If the non-compliance is serious we are more likely to open a formal investigation, and may prosecute, particularly if we believe a person or organisation is obstructive, or has a previous record of similar non-compliance.

Where an organisation such as an employer or airline is subjected to sanctions, INZ expects to continue working with that individual or organisation to assist and monitor their path back to a situation of full compliance.

In some cases, steps may be taken that effectively exclude or adversely impact on the ability of an individual or organisation to participate in the immigration system in the future.
THE DEPARTMENT OF LABOUR’S ENFORCEMENT TOOLS

The circumstances of a given case and our judgement will determine which tools we choose to use to enforce compliance with New Zealand’s immigration law. We will remain flexible in our approaches to enforcement and will adapt to meet change.

Voluntary compliance

The Department’s objectives for immigration are shared by many of our key stakeholders, including carriers and employers. This makes a collaborative relationship based around voluntary compliance mutually beneficial. Above all, the onus is on individuals and organisations to ensure they comply with the law. INZ is able to assist in a number of ways, for example through:

- Easily accessible information to help people understand their legal obligations.
- Targeted information campaigns and education programmes about their obligations and INZ’s expectations where appropriate.
- Collaboration with key sectors on the development of standards of best practice.
- Negotiating an outcome that assists an individual or organisation to comply with their obligations. For example, on engagement with a manager of a suburban supermarket, it was discovered that his school age employees were working in breach of their student permits. As a result, the students were stood down from their employment while they applied to INZ for variations of the conditions of their student permits that would allow them to work. They were subsequently re-employed once their immigration status allowed this.

Enforced compliance

Where an individual or organisation fails to comply with their obligations under immigration law, INZ may enforce compliance through sanctions or other processes, including through immigration decision-making. The tools available to INZ include:

- **Immigration decision-making**
  
  It is critical to the integrity of the immigration system that individuals are honest in their dealings with INZ. If an applicant for a visa or entry permission provides false or misleading information to, or conceals relevant information from INZ, INZ is likely to decline the application or refuse entry permission. False or misleading information provided in earlier applications becomes a factor that is considered in any future engagements an individual has with the immigration system.

  For an employer or sponsor wanting to support an employee or family member to come to New Zealand, their record of compliance in previous cases as an employer or sponsor will be taken into account as a factor in decisions made by INZ.

- **Involvement of other agencies**
  
  INZ may involve other Government agencies or branches of the Department in order to influence an individual or organisation’s behaviour. Intervention by these agencies/branches may occur in isolation or as part of a suite of activities designed to
achieve compliance, both with immigration law and other statutory requirements (e.g. minimum wage obligations, tax obligations, Civil Aviation Authority obligations).

- **Deportation processes**

INZ may take steps to deport certain foreign nationals if they are found to be employed when they are ineligible to work, or have provided false or misleading information on their immigration application. This may have consequences for their ability to return to New Zealand in the future.

- **Recovery of costs from sponsors**

INZ may take action against a sponsor, in accordance with sponsorship undertakings given, to recover the costs incurred in removing or deporting a foreign national sponsored by that person or organisation. Sponsors may also be liable to other Government agencies for other costs incurred as a result of a failure to comply with the sponsorship undertakings.

- **Infringement fees**

INZ may issue infringement fees notices to carriers and persons in charge of craft, for non-compliance with specific obligations, once the provisions of the Immigration Act 2009 are implemented.

- **Prosecution**

When an individual or organisation commits an offence against immigration law, they are liable for prosecution. Situations where prosecution is most likely include the most serious actions or instances of non-compliance. These actions are considered serious in terms of scale, repetitiveness, or economic cost, and actions that are intentional or that cause significant risk to our country or to individuals. Decisions to prosecute will be consistent with this enforcement policy and our objective of encouraging sustained compliance.

The decision to prosecute will also be informed by the *Prosecution Guidelines* issued by the Crown Law Office, which amongst other things, refer to factors such as whether there is sufficient evidence to provide a realistic prospect of conviction and whether prosecution would be in the public interest.²

INZ also believes that ensuring appropriate publicity of prosecution cases is important for ensuring further compliance.

**ADDITIONAL GUIDANCE**


Specific guides relating to the immigration obligations for various sectors can also be accessed from the website or from offices of the Department, for example:

- **People Travelling to New Zealand: Information for Airlines**
- **Immigration Guide for Employers**

In addition, information can be obtained through the Immigration Contact Centre during business hours on telephone number 09 914 4100 (if you are in Auckland) or freephone number 0508 558 855 (if you are elsewhere in New Zealand).
HOW THE DEPARTMENT OF LABOUR WILL INTERACT WITH EMPLOYERS

The Department’s primary role is to improve the performance of the labour market. The number of skilled workers, and the quality and organisation of their work, are the major drivers of labour productivity improvements that provide the foundation for economic growth.

INZ supports businesses to employ New Zealanders or residents first. Where no New Zealanders or residents are available, INZ assists employers to recruit and retain skilled workers from offshore. At the same time, it is also important that opportunities for work are protected for those who are entitled to work, and that the exploitation of workers, whether legally entitled to work or not, is eliminated. We believe our values will be shared by all good New Zealand employers.

The exploitation of workers who are vulnerable (including those who are not legally entitled to work) may be viewed particularly seriously. It continues to be an offence for an employer to exploit a person who is not legally entitled to work.

One of the main effects of the changes in the Immigration Act 2009 is that the provision of an IR330 tax declaration form, signed by a prospective employee, is no longer a “reasonable excuse” for employing a foreign national who is not actually entitled to work in New Zealand. Instead, an employer will have to show that they did not know the person was not entitled to work, and took reasonable precautions and exercised due diligence to check whether the foreign national was entitled to work for the employer in New Zealand. It is an offence to employ a person who is not legally entitled to work.

What do we expect from employers?

We expect employers to be able to show that all their workers are legally entitled to work under immigration law. We would encourage them to have systems and processes in place to guarantee this.

How can we assist employers to comply?

We are providing employers with tools and information that enables them to comply with their obligations. The Department has also produced a best practice guide, A guide for helping employers check work entitlement, which provides guidance about best practices on how to check documentation, a list of acceptable documents, and systems for retaining evidence about checks that have been undertaken.

An online enquiry system, VisaView, and a dedicated telephone enquiry line for registered employers to check the immigration status of prospective employees has been in place since 2 August 2010.

What if employers fail to meet their obligations?

We may consider prosecution. Some factors that would influence a decision to prosecute an employer include:

- How the employer has responded to engagement by INZ to assist that employer to become compliant.
- How the employer has responded to warnings.
• Whether the employer has taken steps to comply with the law.
• Whether it is a one-off instance of non-compliance, or non-compliance is repetitive.
• The scale of the non-compliance by the employer.
• Whether the employer’s non-compliance is innocent or fraudulent.
• The seriousness of the non-compliance by the employer.

**What are the implications for compliance action?**

An employer's compliance record is also taken into account by INZ when determining visa applications from individuals who are sponsored by them or to whom they wish to offer employment in the future.

Similarly, an employer's compliance record is also taken into account if they apply for status as a recognised or accredited employer in order to facilitate immigration applications for prospective employees under specific immigration policies.³

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³ For example, if an employer applies to become a Recognised Seasonal Employer for the purposes of recruiting seasonal workers under the Recognised Seasonal Employer Policy, INZ assesses the employer's workplace practices, including their history of compliance with all immigration and employment laws.
HOW THE DEPARTMENT WILL INTERACT WITH COMMERCIAL AIRLINES

With over 28,000 flights, carrying nine million passengers arriving in and leaving New Zealand each year, airlines play a critical role in protecting the New Zealand border and the integrity of the immigration system. The Department values the relationship with airlines as a cornerstone of our approach to managing the border.

Under immigration law, airlines have obligations in relation to passengers arriving in, transiting through, and departing from New Zealand. For example, airlines must:

- ensure every person boarding an aircraft has the right documents for immigration purposes, including a valid passport or other travel document, and a valid visa if required, and
- confirm each passenger's entitlement to travel to New Zealand, prior to allowing them to board a plane, by providing specified information about passengers to INZ through the Advance Passenger Processing system.

In addition to the legislative penalties for non-compliance contained in both the Immigration Act 1987 and the Immigration Act 2009, there can be additional costs to the airlines, as they may sometimes be responsible for the costs of returning passengers who are refused entry to New Zealand at the border.

The Department’s aim is for airlines to cooperate to reduce the risks to New Zealand’s security, international reputation as a safe and secure nation, and economic growth presented by non bona fide travellers.

What do we expect from airlines?

We expect airlines to comply fully with all obligations under immigration law.

How can we assist airlines to comply?

INZ has a comprehensive programme of engagement with airlines which involves education, provision of training materials and information, and providing 24 hour telephone support. Airlines’ performance is monitored and reported back to them by INZ. This programme for engagement with airlines is set out in our Airline Performance Management Framework.

What if airlines fail to meet their obligations?

Airlines are liable for prosecution where a breach warrants such action. Under the Immigration Act 2009, airlines will also become liable for infringement fees for breaches of certain obligations. The approach to implementing infringement fees is being developed, and the level of fees for offences will be specified in Regulations.

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4 Although the focus of this appendix is on the commercial airline sector, all carriers, and persons in charge of craft, including maritime carriers and non commercial craft, have obligations under immigration law.

5 Failure to comply with the various carrier obligations is an offence, with penalties for the carrier or person in charge of the craft ranging from $10,000 to $50,000, and/or periods of imprisonment of up to 3 months.

6 Bona fide traveller: a traveller who genuinely intends to travel to New Zealand for a lawful purpose, using lawful documentation.