

Departmental Disclosure Statement

Maritime Crimes Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Foreign Affairs and Trade and the Ministry of Justice.

The Ministry of Foreign Affairs and Trade and the Ministry of Justice certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

4 April 2016.

Contents

Contents..... 2

Part One: General Policy Statement 3

Part Two: Background Material and Policy Information 4

Part Three: Testing of Legislative Content..... 6

Part Four: Significant Legislative Features 9

Part One: General Policy Statement

The aim of this Bill is to amend the Maritime Crimes Act 1999 (the principal Act) to implement obligations under the Protocol of 2005 to the Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol of 2005 to the Rome Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (the 2005 Protocols).

The 2005 Protocols are maritime counter-terrorism treaties adopted by a Diplomatic Conference in London in 2005, signed by New Zealand in 2007, and which entered into force on 28 July 2010. The 2005 Protocols amend their respective parent treaties, the Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the Rome Convention) and the Rome Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (the Rome Protocol), to ensure that the maritime security framework established under the parent treaties can respond to contemporary transnational terrorist threats.

The Bill introduces new offences which relate to—

- maritime terrorism:
- the illicit trafficking by ship of weapons of mass destruction, their delivery systems, and related material:
- the transportation of fugitives by ship:
- intentionally causing death or injury in connection with these offences.

The Bill also introduces a maritime boarding regime, consistent with existing international law, which clarifies enforcement officers' powers when taking action in relation to offences under the principal Act. The Bill also provides that the principal Act does not apply to situations of armed conflict.

Enactment of the Bill will enable New Zealand to ratify the 2005 Protocols. The Bill will be brought into force by Order in Council following New Zealand's ratification of the 2005 Protocols.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
<p>The Bill gives effect to the Protocol of 2005 to the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Rome Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the 2005 Protocols). New Zealand signed the 2005 Protocols in 2007. Enactment of this Bill will enable New Zealand to ratify the 2005 Protocols.</p> <p>A consolidated text including the amendments the 2005 Protocols make to the Rome Convention and Rome Protocol is included in Schedule 1 to the Bill.</p>	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES
<p>Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf: National Interest Analysis of June 2009, prepared by the Ministry of Foreign Affairs and Trade and the Ministry of Justice.</p> <p>This report can be found in Appendix B of the report of the Foreign Affairs, Defence and Trade Committee, accessible at http://www.parliament.nz/resource/0000082905.</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>An extended National Interest Analysis incorporating the regulatory impact analysis requirements was prepared by the Ministry of Foreign Affairs and Trade and the Ministry of Justice in June 2009. This report can be found in Appendix B of the report of the Foreign Affairs, Defence and Trade Committee, accessible at http://www.parliament.nz/resource/0000082905.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The RIA Team in Treasury did not provide an independent opinion because the RIS did not meet the threshold for RIA Team assessment.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
The RIS identified above in 2.3 sets out on pages 6-7 the advantages and disadvantages to New Zealand of the 2005 Protocols entering into force for New Zealand, while page 11 covers the categories of costs. The costs are expected to be minimal.	
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The policy to which this Bill gives effect is not expected to cause any group of persons to suffer a loss of income or wealth.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

Enactment of the Bill will enable New Zealand to ratify the Protocol of 2005 to the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Rome Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the 2005 Protocols). The Bill is therefore consistent with the obligations New Zealand will assume under the 2005 Protocols. See 2.2 above. The Ministry of Foreign Affairs and Trade considers that the policy to which the Bill gives effect is consistent with New Zealand's existing international obligations, including those arising under the United Nations Convention on the Law of the Sea.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Foreign Affairs and Trade and the Ministry of Justice analysed the Bill and the maritime counter-terrorism treaties to which it gives effect and did not identify any implications for the rights and interests of Māori protected by the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill creates the following offences and penalties:</p> <p>Clause 10 inserts new sections 4A to 4C. New section 4A(1) creates a new offence relating to terrorism and ships, while new section 4A(2) provides that it is an offence to threaten to do something that would be an offence against new section 4A(1). New section 4B(1) creates a new offence of intentional transportation on board a ship of certain weapons, nuclear material or equipment. New section 4C creates an offence of transporting a person on board a ship to help the person evade criminal prosecution, knowing the person has committed an offence against the principal Act that relates to a ship or an act against a specified terrorism convention.</p> <p>Clause 12 inserts new section 5A. New section 5A(1) creates a new offence relating to terrorism and fixed platforms. New section 5A(2) provides that it is an offence to threaten to do something that would be an offence under new section 5A(1).</p> <p>Clause 13 replaces sections 6 to 9 of the principal Act with new sections 6 to 9. New section 6 provides that it is an offence to intentionally cause the death of any person in connection with the commission of an offence against sections 4(1) or 5(1) or new sections 4A(1), 4B, 4C, or 5A(1) if the conduct concerned would amount to murder or manslaughter if the conduct occurred in New Zealand; or to injure any person in connection with the commission of an offence against any of those sections.</p> <p>New section 7 sets out the penalties for offences against section 5 or new sections 4A, 4B, 5A, or 6.</p> <p>New section 10F provides that it is an offence to obstruct, or to fail to comply with a lawful direction of, an enforcement officer exercising a power under the principal Act.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice administers the principal Act and was consulted on the drafting of the Bill, including the offences and penalties created by the Bill.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
There were no sections of the public identified as having specific interests in the implementation of these particular counter-terrorism treaties.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
The operational agencies were consulted during the development of the policy and the legislation to ensure that the changes can be successfully operationalised.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
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<p>Clause 13 of the Bill inserts a new section 8 in the principal Act (replacing the existing sections 8 and 9) extending the extra-territorial jurisdiction for offences in the principal Act to the new offences inserted by the Bill. This extra-territorial jurisdiction is required to implement the 2005 Protocols.</p> <p>Clause 15 of the Bill inserts a new legislative framework for ship boarding and entry into fixed platforms. This legislative framework is necessary to implement article 8bis of the 2005 Protocol to the Rome Convention. It will enable agencies to conduct effective enforcement operations in New Zealand's territorial sea or on the high seas where offences in the Maritime Crimes Act are involved (with appropriate variations according to the maritime zone involved). Reliance on New Zealand's existing ship boarding frameworks in the Customs and Excise Act 1996 and Fisheries Act 1996 would not provide a sufficient basis for the conduct of enforcement operations in respect of Maritime Crimes Act 1999 offences. In addition, the search powers in Part 4 of the Search and Seizure Act 2012 need to be specifically extended to enforcement officers exercising powers under the ship boarding regime beyond New Zealand's territorial sea.</p>	
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