

Departmental Disclosure Statement

Autonomous Sanctions 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.

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

4 May 2017

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Part One: General Policy Statement

This Bill establishes a framework for the implementation of autonomous sanctions by New Zealand.

Autonomous sanctions are restrictive measures designed to influence the behaviour of a foreign individual, entity, or regime that is responsible for a situation of international concern. Sanctions can take a variety of forms. The aim of sanctions is to exert political and economic pressure to bring about change, as well as to limit the adverse consequences of the situation (for example, by limiting access to military goods or military training). The Bill will enable the government to—

- designate individuals, entities, assets and services to be targeted by autonomous sanctions;
- impose prohibitions or restrictions in relation to designated individuals or entities, including travel bans and prohibitions on remaining in New Zealand, and prohibitions or restrictions on dealing with assets or services linked to those individuals or entities (including asset freezes);
- prohibit or restrict other kinds of specified dealings with designated assets and services (for example, trade embargoes); and
- impose duties in relation to compliance with autonomous sanctions.

The Minister of Foreign Affairs must be satisfied, before recommending the making of regulations to impose an autonomous sanction, that the regulations will assist in maintaining or restoring peace and security in response to—

- a threat to peace and security in the Asia-Pacific region; or
- a breach of international peace and security in response to which the United Nations (UN) Security Council—
 - has not acted under Article 41 of the Charter of the UN (whether because of the exercise of a veto by a permanent member of the Security Council or otherwise); or
 - has acted under Article 41, but the action is insufficient to maintain or restore peace and security.

New Zealand currently has the ability to impose a limited range of sanctions and sanction-type measures in an ad hoc way within existing policy and legal frameworks. These include the refusal of entry visas, diplomatic sanctions (such as the expulsion of diplomats), the suspension of official visits, and the suspension of aid and co-operation.

The measures available to New Zealand under current policy settings are not seen, either here or by our close security partners, as being a sufficient response to situations of real concern in cases where human rights, fundamental freedoms, the rule of law, or democratic principles are being violated. Targeted economic and financial sanctions (known as “smart sanctions”) are considered to be among the most effective measures available, and are regarded as a critical element of an effective sanctions regime. Such measures allow restrictions to be applied in a way that targets the individuals, entities, assets, and services that are contributing most to a situation of concern, while minimising any deleterious effects on the wider population.

The Bill’s provisions may be used to supplement compulsory sanctions imposed by the United Nations Security Council acting under Chapter VII of the UN Charter, or may be applied independently of any action by the Security Council.

The Bill establishes a framework for the implementation of autonomous sanctions by regulation in clearly defined circumstances. Regulations will set out the specific prohibitions and restrictions that apply and the particular countries and descriptions of individuals, entities, assets, and services concerned. Individuals, entities, assets, or services that are subject to sanctions are able to be further identified by a designation notice published in the *Gazette* (as long as the further identification is consistent with the description in the regulations).

The framework is designed to provide the flexibility to tailor sanctions to different situations of concern and to enable the Government to take action in a timely way. It is also designed to provide certain protections to those who will be subject to sanctions and to innocent third parties who may be adversely affected by sanctions decisions. The Bill incorporates provisions to ensure that autonomous sanctions are transparent, able to be reviewed and revoked, temporary rather than permanent, and subject to exemptions where appropriate (for example, to meet humanitarian needs).

While existing processes and mechanisms are in place for the monitoring and enforcement of immigration restrictions and import and export restrictions, the Bill contains a requirement for banks and any other person specified by regulation to report to the Commissioner of Police when they suspect they are in possession of assets or providing services that are subject to a sanction. This will facilitate the monitoring and enforcement of any restrictions imposed under autonomous sanctions regulations. At the same time, the Bill confers immunity from legal proceedings on any person who takes action in good faith in order to comply with the Bill or regulations made under the Bill.

Where designated individuals (other than New Zealand citizens or holders of a residence class visa) are already in New Zealand at the time of designation, the Bill allows the autonomous sanction regulations to prohibit them from remaining in New Zealand, and links to the deportation provisions of the Immigration Act 2009.

United Nations Act 1946

The United Nations Act 1946 provides a parallel regulation-making power, enabling New Zealand to implement sanctions determined by the UN Security Council acting under the UN Charter. The penalties in the United Nations Act 1946 have not been updated since 1990 and are now ill-matched to the seriousness of breaching a sanction. The Bill amends the United Nations Act 1946 to align the penalty for breaching a UN sanction under that Act with the penalty for breaching an autonomous sanction as follows:

- in the case of an individual, imprisonment for a maximum of 5 years or a fine not exceeding \$100,000, or both; and
- in the case of a body corporate, a maximum fine of \$1 million.

The Bill also amends the United Nations Act 1946 to replicate the monitoring and enforcement provisions relating to autonomous sanctions such as the duty to report suspicious assets and services. This will ensure that the UN sanctions and autonomous sanctions regimes are well harmonised.

This Bill is an omnibus Bill introduced in accordance with Standing Order 263(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

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?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>“Regulatory Impact Statement: Autonomous Sanctions and United Nations Amendment Bill”, Ministry of Foreign Affairs and Trade, 15 October 2012. Available at https://mfat.govt.nz/en/peace-rights-and-security/sanctions/.</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?	YES
<p>14 May 2013:</p> <p style="text-align: center;">Castalia assessment: Partially meet criteria</p> <p style="text-align: center;">Agency assessment: Meets criteria</p> <p>This RIS is judged to partially meet the Quality Assurance criteria. The RIS should more clearly describe the process that will be used to impose Autonomous Sanctions. The last sentence of paragraph 19 contains the crucial information that future sanctions imposed under the Autonomous Sanctions Bill would need their own RIS to discuss the specific costs and benefits. Despite each sanction requiring a separate RIS, the current RIS still needs to give decision members some sense of the overall cost and benefits of changing the broad framework-legislation on sanctions. Paragraph 19 claims that the RIS “considers not only the effect of the Bill, but also the range of impacts potentially resulting from the imposition of specification sanctions...”. However the has very little information on possible impacts of sanctions imposed under the Autonomous Sanctions Bill:</p> <ul style="list-style-type: none">• The RIS does not identify or attempt to quantify the costs of the preferred option. The numerous references to additional costs or impacts being minimal or limited is unconvincing. Sanctions are likely to impose costs on a range of groups, including financial institutions who have to freeze assets and New Zealand importers or exporters who have to cease trade. How much does it cost to freeze assets? How many New Zealand firms trade in weapons or military goods that could be affected by sanctions?• The RIS does not convince the reader of the benefits of the preferred option: the RIS states that “the practical impact of sanctions imposed unilaterally by New Zealand will be limited by our comparatively small size and our geographic isolation”. So if sanctions have limited practical impact, what is the benefit of extending our sanctions?• The RIS fails to consult key affected parties like the exporters association, or financial	

institutions. It also seems that the use of sanctions needs to comply with international best practice on limiting the rights of foreigners to travel, spend money and buy goods: why was there no input from international law experts or organisations representing human rights?

These weaknesses mean the RIS does not fully fulfil its core role of informing stakeholders or decision makers of the impacts of extending MFAT's ability to impose autonomous sanctions.

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
<p>A Regulatory Impact Statement was prepared in accordance with the necessary requirements and was submitted at the time that approval of the policy parameters of the Bill was being sought [ERD Min (12) 8/3, CAB Min (12) 37/10]. While the Bill has been updated and finalised since that time, there have been no policy changes to the Bill which would result in a material change in the impact of the Bill.</p> <p>Decisions to impose sanctions will be taken by Cabinet on a case-by-case basis, on advice of the Minister of Foreign Affairs. Specific sanctions would then be implemented through regulations, under the authority of the Bill.</p> <p>The regulatory impact analysis requirements will apply to any regulations made under the Bill, applying specified sanction measures. This will provide the opportunity to consider the regulatory impact of any individual proposal at that time.</p>	

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

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?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The 2012 RIS referred to above notes the possibility of additional compliance costs being imposed on business, the restriction of certain business dealings, or the impairment of private property rights. The analysis concludes that such impacts will occur infrequently; will be insignificant in the wider context; or merely extend compliance requirements that affected institutions are already accustomed to. In some cases mitigating factors are proposed to be included in the autonomous sanctions framework.</p> <p>Further analysis of costs and benefits will be possible in assessing the regulatory impact of specific regulations made under the Bill.</p>	

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?
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The Bill has been developed by the Ministry of Foreign Affairs and Trade in consultation with other relevant agencies and in light of international precedents (especially the Australian Autonomous Sanctions Act 2011). The Ministry considers that the policy to be given effect by the Bill is consistent with New Zealand's international obligations. Sanctions adopted by regulations under the Bill will need to be separately assessed for consistency with New Zealand's international obligations, including trade obligations.
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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 has analysed the Bill and has not identified any implications for the rights and interests of Māori protected by the Treaty of Waitangi.
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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>Clauses 18 to 21 create a civil liability regime for people who breach or fail to comply with an autonomous sanction. The regime also applies if there are reasonable grounds to believe that a person is likely to breach or fail to comply with an autonomous sanction.</p> <p>The Attorney-General may issue a formal warning to a person to whom the regime applies, or accept an enforceable undertaking and then seek an order of the court if the undertaking is breached. Or the Attorney-General may seek an injunction restraining a person from breaching or failing to comply with an autonomous sanction.</p> <p>Clause 22 sets out offences under the Bill. It is an offence to knowingly or recklessly breach or fail to comply with an autonomous sanction without lawful justification or excuse (clause 22(1)). It is also an offence to knowingly provide false information or make material omissions in connection with an application for the amendment or revocation of, or for an exemption from, an autonomous sanction (clause 22(3)).</p> <p>The offences under clause 22(1) and (3) are punishable for individuals by imprisonment for a term not exceeding 5 years or a fine not exceeding \$100,000 (or both), and for entities by a fine not exceeding \$1 million.</p> <p>Knowingly failing to provide a report required under clause 15 is an offence, as is knowingly providing false information or making material omissions in a report: clause 22(5). The punishment for individuals is a term of imprisonment not exceeding 1 year or a fine not exceeding \$20,000 (or both). The punishment for entities is a fine not exceeding \$200,000.</p> <p>A person who knowingly breaches clause 16(4) commits an offence and is liable to a fine not exceeding \$10,000 (clause 22(7)). Clause 16(4) prohibits a person from disclosing in any judicial proceeding information protected under clause 16, unless the decision-maker at the proceeding is satisfied that the disclosure is necessary in the interests of justice.</p> <p>The Bill's civil enforcement measures are also inserted by clause 30 into the United Nations Act 1946. In addition, clause 29 amends the United Nations Act to bring the criminal penalties for breaching United Nations sanctions into line with those under the Autonomous Sanctions Bill.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice (MOJ) was consulted in November 2012 and April 2017 on the enforcement provisions of the Bill. MOJ provided comment on the civil enforcement mechanism in April 2017 which led to improvements in the drafting to clarify the interaction of civil and criminal enforcement measures. This included the deletion of a proposed pecuniary penalties provision which was considered to overlap with the possibility of criminal fines.</p>	

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?	YES
<p>Clause 14 of the Bill establishes a public register, maintained on a website by the Ministry of Foreign Affairs and Trade, that lists all current autonomous sanctions and exemptions.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner (OPC) was consulted on the Bill in April 2017. The OPC encouraged MFAT to assess clause 14 against the OPC's guidance for agencies drafting public register provisions, including consideration of whether a purpose provision was needed. MFAT concluded that a purpose provision was not needed, as the purpose of the register was sufficiently clear from the Bill itself. The OPC noted that the Privacy Commissioner may wish to make further comments at later stages of the legislative process.</p>	

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

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
<p>In developing the Bill with relevant agencies, consideration has been given to how autonomous sanctions will be implemented and work in practice. This includes consultation with the Ministry of Business, Innovation and Employment in respect of travel bans and with the NZ Customs Service on the Customs treatment of assets that are subject to an autonomous sanction.</p>	

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

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

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

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?	YES
Clause 17 confers immunity from legal proceedings on any person who takes action in good faith in order to comply with the Bill or regulations made under it. This is consistent with similar immunities under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and the Terrorism Suppression Act 2002.	

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

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

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clause 9 enables the making of regulations prescribing autonomous sanctions, by the Governor-General in Council on the recommendation of the Minister of Foreign Affairs. The Bill provides the framework for autonomous sanctions, whereas the detail (including the designation of persons, assets and services and a description of the corresponding prohibitions and restrictions) is to be provided for in regulations. This approach is similar to the Australian autonomous sanctions legislation. In addition, clause 11 enables the Minister of Foreign Affairs to make <i>Gazette</i> notices designating persons, assets and services that meet the descriptions or any classes in regulations made under clause 9, and clause 13(1)(c) enables the making by the Minister of exemptions (which are disallowable instruments).</p> <p>The safeguards on the making of autonomous sanctions regulations include the threshold provision in clause 8, which specifies the conditions that must be satisfied before the Minister of Foreign Affairs may recommend the making of regulations, the requirement in clause 9(a) for a purpose statement, the mandatory expiry of regulations after three years unless the Minister is satisfied that an extension is required (clause 12), and the mechanisms in clause 13 whereby any person may apply to the Minister of Foreign Affairs to have regulations amended or revoked, or an exemption granted.</p> <p>Clause 26 enables the making of other regulations by the Governor-General by Order in Council on the recommendation of the Minister of Foreign Affairs. These regulations will provide for matters of detail necessary to support the implementation and operation of the Act, namely the circumstances in which compensation may be payable to persons adversely affected by the imposition of autonomous sanctions, the specification of duty holders subject to the duty to report suspicions under clause 15, the information to be included in reports of suspicions, the information to be included in a formal warning under clause 18(2)(a), and any other matters necessary for the administration of the Act.</p> <p>Regulations made under clauses 9 and 26 will be drafted by Parliamentary Counsel, subject to Cabinet scrutiny, and not come into force until at least 28 days after their making. Regulations will be subject to the Legislation Act 2012, including disallowance by the House of Representatives, and subject to review by the Regulations Review Committee.</p>	

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
<p>Under clause 24, the offences established under clause 22 apply extraterritorially. This is considered appropriate given the international character of autonomous sanctions, and is modelled on section 7A of the Crimes Act 1961.</p>	

