

Departmental Disclosure Statement

Asia-Pacific Economic Cooperation (APEC 2021) Bill
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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.

11 November 2019

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Part One: General Policy Statement

From December 2020 until November 2021, the New Zealand Government will host the Asia-Pacific Economic Cooperation forum (APEC 2021). Meetings involving senior officials, Ministers, and others will be held over the course of the year. The leaders' week, involving 21 world leaders, Ministers, officials, business people, youth representatives, and media, will take place from 8 to 14 November 2021. There will be bilateral leaders' meetings in the weeks either side of leaders' week. The requirements of hosting and securing APEC 2021 are of significant scale and complexity.

The policy objectives of this Bill are to:

- support safe and secure APEC 2021 events for all world leaders, attendees, and the general public;
- assist in mitigating security risks that could result in harm to individuals or property or the disruption or cancellation of APEC 2021 events; and
- assist in facilitating the smooth, timely, and efficient operation of APEC 2021.

The main provisions in this Bill:

- enable members of the New Zealand Armed Forces to provide specialist support to the APEC 2021 security operation, while being fully integrated into the New Zealand Police operation and under New Zealand Police control, with the constabulary powers necessary to undertake any functions and training required;
- create a legislative framework to enable the Commissioner of Police to designate enforcement officers with limited powers for fixed periods to provide APEC 2021 security;
- permit certain foreign protection officers to carry otherwise restricted weapons, subject to approval by the Commissioner and to any conditions the Commissioner may impose;
- create temporary powers, and associated offences, for the purposes of:
 - securing APEC 2021 accommodation, venues, and other sites
 - road closures for APEC 2021 security purposes
 - road closures for APEC 2021 motorcades
 - securing maritime areas to manage the water areas surrounding hotels or other locations, and maritime transit corridors;
- provide legislative powers to intervene and respond effectively and appropriately to risks posed by aircraft; and
- enable the New Zealand Police and, subject to approval by the Commissioner, foreign protection agencies to import, use, and export wireless electronic countermeasures (W-ECM) technology during APEC 2021 events.

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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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?	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>Legislative enablers for hosting and securing the Asia-Pacific Economic Cooperation (APEC) Meetings in 2021, Ministry of Foreign Affairs and Trade, dated 9 November 2018.</p> <p>https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments</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>On 6 November 2018 the Treasury provided the following opinion:</p> <p>A Quality Assurance Panel with representatives from the Regulatory Quality Team at The Treasury, the Ministry of Justice and the New Zealand Police has reviewed the Regulatory Impact Assessment “<i>Legislative enablers for hosting and securing the Asia-Pacific Cooperation (APEC) Meetings in 2021</i>” produced by the Ministry of Foreign Affairs and Trade and dated November 2018. The Quality Assurance panel considers that it meets the Quality Assurance criteria.</p> <p>The RIA is clear and logical in presenting proposed changes to seven legislative areas. The objectives and decision criteria describe the desired outcome. The impact analysis of the options within each of the seven areas is comprehensive and convincing. MFAT has undertaken extensive consultation with key stakeholders within government. The implementation risks and mitigation steps have been identified and explained.</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?	YES
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<p>The following policy changes have been made after further consideration during the development of the Bill:</p> <ul style="list-style-type: none"> • To implement the policies regarding New Zealand Defence Force (NZDF) support and enabling carriage of weapons by foreign protection officers Cabinet agreed to amend the Defence Act 1990 and the Arms Act 1983 respectively. Based on advice from Parliamentary Counsels Office the policies are now implemented through this standalone Bill. • Powers linked to airspace enforcement that were to be available to the NZDF are now limited to NZ Police alone. • Powers linked to airspace enforcement that were to be available to the Aviation Security Service have also now been limited to NZ Police alone. • The ability to create maritime safety and security areas was originally linked to Auckland harbour, focussing on the Waitematā Harbour. These areas can now be created where required for security or safety purposes. 	
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Extent of impact analysis available

<p>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</p>	<p>NO</p>
<p>Despite the minor policy changes outlined above, a new or amended RIA was not considered required for this Bill as the changes were minor and the policy intent was considered in that RIA and officials' advice is unchanged.</p>	

<p>2.5. For the policy to be given effect by this Bill, is there analysis available on:</p>	
<p>(a) the size of the potential costs and benefits?</p>	<p>YES</p>
<p>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</p>	<p>YES</p>
<p>The provisions of this Bill are designed to support hosting and security activities. Aside from penalties for any person convicted of a proposed offence, there are no direct costs from these provisions. By enabling more effective hosting and security activities the benefits applicable to the APEC events can be more fully realised.</p> <p>See Section 4 of the RIA at https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments</p> <p>Security areas may impact upon local businesses and may thus impact upon income. These areas will be limited in size and disruption caused, to the extent practical as well as being consulted and notified. It is the intention of APEC NZ to connect NZ businesses with the opportunities APEC will bring.</p>	

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

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 policy to be given effect by this Bill has been assessed by the Legal Division of the Ministry of Foreign Affairs and Trade. No issues were identified.

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?

During the policy development process consultation was undertaken with the Principal Adviser (Māori) within the APEC 2021 Programme to ensure consistency with the principles of the Treaty of Waitangi.
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Consideration was given to ensuring that the policy around maritime safety and security areas did not limit Kaimoana Customary Fishing / Gathering.

No other issues were identified in the Bill that may have 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
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The Ministry of Justice has assessed the Bill as to its consistency with New Zealand Bill of Rights Act 1990 and have concluded that the Bill is consistent with the rights and freedoms affirmed in that Act.
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In summary they have reported to the Attorney General that:

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| <ul style="list-style-type: none">• The Bill grants wide discretionary powers during the three-week period in November 2021. APEC 2021 is a major international event of significant scale and complexity. Leaders from 21 world economies will be in New Zealand.• The exercise of the discretionary powers granted under the Bill are likely to result in significant limitation on certain protected rights and freedoms, in particular freedom of movement. However, they consider that these limits can be justified in a free and democratic society. This is largely on the basis that:• There is a clear and pressing need for security at an event of such international significance; and• There is nothing to suggest that Parliament is authorising the powers be used in a way that is inconsistent with the Bill of Rights Act. While the powers appear to be granted in wide-terms, s6 of the Bill of Rights Act requires that these powers be interpreted consistently with the Bill of Rights Act where possible. Rights consistent interpretations of these powers are available. |
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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 8 temporary offences:</p> <ul style="list-style-type: none"> • Impersonation of constable by a member of APEC security staff. • Impersonation of APEC security staff. • Knowingly attempt to enter or remain in security area or secure transport route. • Knowingly not comply with requirement, condition, direction, or prohibition in security area or secure transport route. • Knowingly interfere with closure of security area or secure transport route. • Knowingly fail to stop (or keep stopped) a vehicle or vessel. • Knowingly operate aircraft or do an activity in breach of APEC security airspace. • Knowingly not comply with requirement, condition, direction, or prohibition in relation to APEC security airspace. <p>All offences against this legislation will carry the same penalty on conviction - to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000. This penalty is based upon similar offences in the Trespass Act 1980, Summary Offences Act 1981, Civil Aviation Act 1990, Biosecurity Act 1993 and Defence Regulations 1990.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice were consulted during initial policy scoping, during detailed policy development and finally on the policy Cabinet paper. Particular advice was sought on Bill of Rights Act 1990 implications and on proposed offences.</p> <p>As a result of feedback received from the Ministry of Justice a proposed offence relating to public order policing was not progressed further as it was considered problematic and too broad from a Bill of Rights Act 1990 perspective and not necessary to effectively secure APEC 2021.</p> <p>The Ministry of Justice was further consulted during the drafting of this Bill and advice on the search and offence provisions was incorporated.</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
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<p>The Bill enables APEC economies to apply to the Commissioner of Police for protection officers to carry weapons to protect an attending leader. This will involve providing personal and professional information. The process will be managed as part of the APEC 2021 Event Management System which will be preparing a full Privacy Impact Assessment in late 2019.</p> <p>While it is unlikely that use of any wireless electronic countermeasure device will capture a private communication the legislation places significant limitations on:</p> <ul style="list-style-type: none"> • who can use W-ECM devices (must be authorised by the Commissioner of Police); • why they can be used (to counter potential and actual risks to security at APEC events and protected persons); • for how long they can be used (specified period of time linked to an APEC events that expire at the end of each event period); and • where they can be used (linked to APEC security areas, airspace or secure transport routes). <p>The legislation also places obligations on the disclosure, storage and disposal of any private or personal information should any such information be inadvertently capture when responding to a risk cause by a radio ore wireless controlled device.</p>	
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External consultation

<p>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?</p>	<p>NO</p>
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Other testing of proposals

<p>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?</p>	<p>YES</p>
<p>The policy details were developed alongside the APEC New Zealand's and New Zealand Police's high level planning for hosting and securing the APEC forum.</p> <p>The policy details and the draft legislation have been developed with considerable consultation to ensure that New Zealand Police, the New Zealand Defence Force, and other relevant agencies find the legislation and easy to implement and fit for purpose.</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
<p>While there are no provisions that require the compulsory acquisition of private property, the effect of the Bill will be that:</p> <ul style="list-style-type: none">• owners of aircraft who breach APEC security airspace may have their aircraft seized or destroyed;• if the carriage or possession of a firearm, pistol, restricted weapon, part, magazine, or ammunition by a foreign protection officer is not authorised by an authority (or any provision of any other Act), or breaches any condition of an authority a constable may seize and detain it;• if an item or substance is found during a screen or search under the legislation and the searcher has reasonable grounds to suspect that the item or substance is a risk item or substance, the searcher may seize the item or substance. <p>The Bill contains appeal provisions to enable the appeal of a seizure decision.</p>	

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?	YES
<p>The Bill establishes that:</p> <ul style="list-style-type: none"> • Every person is immune from civil and criminal liability for good faith actions or omissions in pursuance or intended pursuance of the person's duties, functions, or powers if: <ul style="list-style-type: none"> ○ the actions or omissions are reasonable; and ○ the person believes on reasonable grounds that the preconditions for the performance or exercise of the duty, function, or power have been satisfied. • Every person is immune from civil and criminal liability for good faith and reasonable actions or omissions to assist another with the other's pursuance or intended pursuance of duties, functions, or powers under this Act. 	

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?	YES
<p>The Bill enables the ability to close a private place for security purposes. This may, in a few circumstances, include the need to search a private dwelling. Should this be required the search may only be done by consent or with a warrant.</p>	

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?	NO

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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APEC in 2021 will be the largest event ever hosted by the New Zealand Government. It is a 12 month series of events, culminating in Leaders' Week in Auckland in November 2021. Its scale, complexity and cost means the APEC Summit is considered a mega-event. It is estimated to be four times the size and of significantly higher complexity of when New Zealand last hosted APEC in 1999. This is based on the size of the delegations and workforce required to support the event.

Since New Zealand last hosted APEC in 1999, the international threat and risk environment has changed significantly. Changes include proliferation of wireless technology, higher risk of low technology terrorist attacks (such as the use of vehicles against crowded places), and social media and ease of information exchange creating less predictable protest activity.

The provisions in this Bill reflect the requirements of hosting and securing an event of the scale and complexity of APEC, especially the Leader's Week period. Legislation is also considered the most transparent way of addressing these issues.

A number of provisions that are likely to be of particular interest are discussed in Appendix One.

Appendix One: Further Information Relating to Part Four

Any other unusual provisions or features- question 4.9

Information on the following issues is included to illustrate some of the complexities of securing APEC and safeguards that have been put in place to ensure the provisions of the Bill are proportional to achieving specific objectives.

The legislation specifically supports APEC New Zealand's strategic objectives, being:

- **SECURE** - New Zealand will host a secure APEC year ensuring all APEC world leaders and attendees feel safe, secure and welcome.
- **EXPERIENCE** - New Zealand will host a high-quality APEC year with all APEC attendees and world leaders experiencing friendly, authentic New Zealand hosting, from the first arrival to the last farewell.
- **LOCAL SUPPORT** - Promote public support in favour of hosting APEC in New Zealand, and New Zealand's role and place in the Asia -Pacific.

The New Zealand Police is leading the security operation with significant support from other agencies across the security sector. The legislation also supports core objectives of that security operation:

- There are no security failures that result in harm to the general public and to attendees.
- There are no security failures that result in damage to property.
- Disruption to, or cancellation of, APEC events does not occur.
- Confidence by foreign authorities in the security settings and arrangements by New Zealand will increase the likelihood of attracting full participation in the Leaders' Week.

Enabling Armed Forces of the New Zealand Defence Force (NZDF) to provide support to APEC security operation

The legislation will enable Armed Forces personnel members to have the powers of a constable to augment Police's capability in specialist roles. The NZDF have readily available staff with appropriate skills that could be sourced to support the security operation during Leaders' Week.

Using these staff would utilise investment that Government has already made in existing national capabilities. This is considered the most practical and cost effective way to close gaps in capacity and capability. NZDF members are compliant with New Zealand Government service requirements and will be sensitive to New Zealand culture as well as NZ Police approaches to hosting and security.

The legislation will require each individual NZDF member to have an authority specifying the roles and tasks they are undertaking and the time period of that authority. This includes periods of required training.

The Commissioner of Police will set all necessary conditions of that authority and have the power to revoke the authority at any time.

The legislation specifically states that the NZDF member is under the operational control of Police and must obey the lawful instructions and directions of the constable in charge of the activity the NZDF member is taking part in.

Enabling the use of wireless electronic countermeasures

The legislation enables the use of wireless electronic countermeasures (W-ECM) to counter potential and actual threats to security. Authorisation for use is subject to the approval of the Commissioner of Police, in consultation with the Radiocommunications Secretary.

The legislation sets out where and when authorisations can be granted and establishes conditions of use including consultation requirements (to minimise effects of use to the extent possible).

The proposed legislation will address privacy issues by specifying that a W-ECM user must not (unless authorised by another Act) use or disclose a radiocommunication or information derived from it that is a private communication.

APEC economies can request that they import W-ECMs to enable protection of their leader. The Commissioner of Police, in consultation with the Secretary of Foreign Affairs and Trade and the Radiocommunications Secretary, is the final decision maker for granting any permission.

Enabling the carriage of weapons by foreign protection officers

The legislation sets out a regime for the potential for APEC economies to request that their leader's protection officers be able to carry arms in New Zealand, for the specific purpose of protecting that leader or immediate family accompanying them.

This is similar to the approach taken during APEC in 1999 when the Arms Act 1983 was temporarily amended to enable carriage of weapons by foreign protection officers.

The Commissioner of Police, in consultation with the Secretary of Foreign Affairs and Trade, is the final decision maker for granting any permission.

Each protection officer will be individually authorised with significant limitations as to the type and number of weapons that may be carried. The authority will state all conditions applicable, for example storage of weapons when the protection officer is off duty. The authority can be revoked at any time.

Weapons will have to have a permit to import (which also can be revoked at any time) and the legislation established an inspection / verification regime that operates both at the border and post-border.

Foreign protection officers will be made aware that they do not have immunity for their actions and that, as with the NZ Police, sections 48 (self-defence and defence of another) and 62 (excess of force) of the Crimes Act 1961 would apply to them should they need to use force or firearms.

Securing airspace

The legislation enables the establishment of restricted / security airspace for APEC similar to such areas that exist for the protection of airports or defence establishments.

The Commissioner of Police can recommend the establishment of such areas with the final decision maker being the Director of Civil Aviation. The areas will be consulted and publically communicated to the extent possible.

The legislation enables the enforcement of breaches of airspace, in particular by unmanned aerial vehicles (known as drones), by Police.

This reflects that, aside from privacy issues and incursions into controlled airspace that put commercial aircraft at risk, unmanned aerial vehicles can pose a risk to crowded public spaces and protest events threatening the safety of the public. In the APEC context UAVs, and potentially piloted aircraft, can also pose a threat to the security of international guests, venues, accommodation and transport.