

# Departmental Disclosure Statement

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Counter-Terrorism Legislation 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 Justice.

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

31 March 2021

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## Part One: General Policy Statement

The Counter-Terrorism Legislation Bill strengthens New Zealand's counter-terrorism legislation to better prevent and respond to terrorism and associated activities. The overarching objective of New Zealand's counter-terrorism laws is to keep the public in New Zealand and other countries safe. It is critical that New Zealand's legislative framework supports the early management of risks and prevention of terrorist attacks and activities that support or enable terrorism.

This Bill is introduced under Standing Order 267(1)(a). That Standing Order permits an omnibus Bill to amend more than 1 Act to be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The interrelated topic is counter terrorism. The single broad policy is to better prevent and respond to terrorism and associated activities by ensuring designation, offence, and control order provisions apply effectively to conduct that is, or that creates an unacceptable risk of, terrorism and associated activities.

The amendments in the Bill implement that single broad policy by amending the Terrorism Suppression Act 2002, the Search and Surveillance Act 2012, and the Terrorism Suppression (Control Orders) Act 2019, to—

- criminalise travel to, from or via New Zealand with the intention to carry out a specified offence in the Terrorism Suppression Act 2002;
- criminalise planning or preparation for a terrorist act (and apply warrantless powers of entry, search, and surveillance to that offence);
- more clearly criminalise weapons and combat training for terrorist purposes;
- extend the terrorism finance offence framework to criminalise wider forms of material support for terrorist activities or organisations;
- update the definition of terrorist act to improve clarity;
- extend the control orders regime so that individuals who have completed a prison sentence for specified offences related to terrorism may be subject to the regime if they continue to present a real risk of engaging in terrorism-related activities;
- improve the workability of the Terrorism Suppression Act 2002 by ensuring that it applies effectively to conduct that is, or that creates an unacceptable risk of, terrorism and associated activities.

Terrorism and violent extremism have proven an enduring global threat over many years. The nature of terrorism and the associated threat continue to evolve – both internationally and domestically.

New Zealand agencies engage in a wide range of counter-terrorism activities to protect the safety, rights, and freedoms of New Zealanders and to contribute to the global counter-terrorism effort. These agencies need tools and clear legal authority to intervene to identify, disrupt and prevent terrorist activities.

The amendments above provide agencies with a range of tools that reflect the evolving nature of terrorism and violent extremism. In doing so they are part of the Government's initial response to the Report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019. The Bill implements part of Recommendation 18 of that report. Recommendation 18 recommended, among other things, prioritising the creation of precursor terrorism offences in the Terrorism Suppression Act 2002.

This Bill is currently not intended to be divided, by select committee or committee of the whole House, into separate amendment Bills.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
<p>The Report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019 (available here: <a href="https://christchurchattack.royalcommission.nz/">https://christchurchattack.royalcommission.nz/</a>) is relevant to the policy given effect to in this Bill. The Government has been reviewing counter-terrorism legislation since late 2018. This review was expedited following the attack on 15 March 2019.</p> <p>The Royal Commission recommended a review of all legislation related to the counter-terrorism effort to ensure it is current and enables Public Sector agencies to operate effectively, prioritising, among other things, the creation of precursor terrorism offences in the Terrorism Suppression Act (see Recommendation 18). The Bill implements part of Recommendation 18 to create precursor terrorism offences as a matter of priority, while a wider review of counter-terrorism legislation to give effect to the remainder of Recommendation 18 is underway.</p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>There are three regulatory impact statements for this Bill:</p> <ul style="list-style-type: none"><li>• <i>Options to strengthen counter terrorism legislation (terrorist financing and terrorism travel offences)</i>, Ministry of Justice, 13 November 2019;</li><li>• <i>Strengthening New Zealand's counter-terrorism legislation</i>, Ministry of Justice, 24 November 2020; and</li><li>• <i>Extended control orders</i>, Ministry of Justice, 24 November 2020.</li></ul> <p>All are available on the Ministry of Justice website: <a href="https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/">https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/</a></p>	

<b>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?</b>	<b>NO</b>
<p>The regulatory impact statements identified above did not meet the threshold for receiving an independent opinion from the Regulatory Impact Analysis Team based in the Treasury.</p>	
<b>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?</b>	<b>NO</b>

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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
Analysis on the monetised costs and non-monetised costs and benefits are available in the regulatory impact statements. The regulatory impact statement for terrorism financing also includes analysis of options to limit income for designated terrorist entities and on the risk of these provisions having unintended consequences that could, for example, include a chilling effect on legitimate donations of aid in crisis zones.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
The effectiveness of the extended control orders regime will be impacted by the compliance of individuals subject to the regime. Control orders enable requirements to be placed on an individual to reduce the risk of the person engaging in terrorism-related activity. If individuals do not comply with the requirements, this reduces the benefits of the regime (i.e. increased public safety). The regime relies on Police ensuring individuals adhere to the requirements of their order and that Police prosecute individuals who breach requirements.  For other provisions in the Bill, it is harder to assess, as the relationship between the regulator and potential terrorist offences is not comparable with typical regulatory systems.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
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One of the key objective/criteria in developing the policy behind this Bill was to ensure New Zealand's counter-terrorism legislative framework is consistent with New Zealand's international obligations, in particular, under United Nations Security Council Resolutions. The Bill makes several amendments to update New Zealand law to give effect to these international commitments.
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### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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Although there was no consultation with Māori on the proposals in the Bill, officials consulted with relevant government agencies and analysed the proposals in this Bill against the principles of the Treaty of Waitangi and the Crown's Treaty obligations.
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The proposals are likely to be of strong interest to Māori, as the significance of the counter-terrorism regime and the fundamental rights involved necessarily impacts the relationship between Māori and the Crown.
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Officials consider that the proposals do not disproportionately affect Māori and that, on balance, they are consistent with the principles of the Treaty. More information is available in the regulatory impact statements.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>	<b>YES</b>
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Advice provided to the Attorney-General, 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 <a href="http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/">http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/</a>
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## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>The Bill introduced several new offences (and associated penalties):</p> <ul style="list-style-type: none"> <li>• to criminalise planning or preparation for a terrorist act (see clause 9);</li> <li>• extend the terrorism finance offence framework to criminalise wider forms of material support for terrorist activities or organisations (see clauses 10 to 14);</li> <li>• to more clearly criminalise weapons or combat training for terrorist purposes (see clause 15); and</li> <li>• to criminalise travelling internationally where a person intends to commit a terrorist act (see clause 16).</li> </ul> <p>The amendments to the control orders regime extends the jurisdiction of the High Court to impose control orders on individuals convicted of specified offending related to terrorism where they continue to pose a real risk of engaging in terrorism related activities (see Part 2 subpart 2 of the Bill).</p>	
<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>NO</b>
The provisions were developed by the Ministry of Justice so no consultation was necessary.	

## Privacy issues

<b>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?</b>	<b>NO</b>

## External consultation

<b>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?</b>	<b>YES</b>
<p>Most of the proposals in the Bill have not been consulted on due to the restrictive nature of the counter-terrorism work programme. There was targeted consultation with a group of external experts on the “terrorist act” definition. It is expected that public consultation will take place at the Select Committee stage.</p>	

## Other testing of proposals

<b>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?</b>	<b>YES</b>
<p>Officials have worked closely with relevant agencies to ensure that the provisions in the Bill are workable and can be operationalised.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>

### Strict liability or reversal of the usual burden of proof for offences

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

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>

### Significant decision-making powers

<b>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?</b>	<b>YES</b>
This Bill extends the power of the Commissioner of Police to apply for a control order to include individuals with previous convictions for terrorism-related offences (see Part 2 subpart 2). The High Court then determines if a control order should be imposed, and the terms of the order. The requirements of a control order could limit a person's rights, such as the freedom of movement and association.	



### Powers to make delegated legislation

<b>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?</b>	<b>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>