

Departmental Disclosure Statement

Foreign Affairs (Consular Loans) 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.

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 May 2022.

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Part One: General Policy Statement

The Bill provides express statutory authority for the Minister of Foreign Affairs to continue the practice of issuing consular loans, consistent with New Zealand's consular functions, to New Zealand citizens and permanent residents where exceptional circumstances exist.

The Ministry of Foreign Affairs and Trade's long-standing practice of issuing consular loans did not require express authority under the Public Finance Act 1989 until that Act was amended in 2013.

For over 25 years, the Ministry has assisted New Zealanders in distress overseas by providing them with temporary financial assistance by way of a consular loan when they have no other means of financial assistance and their immediate health and safety is at risk. The Bill is necessary in continuing this long-standing practice, as well as validating the consular loans granted by the Ministry, in good faith, after the Public Finance Act 1989 was amended in 2013 and before the Ministry received delegated authority in 2020 to lend money under the Public Finance Act 1989.

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?	NO
Treasury's Regulatory Impact Analysis Team has determined the proposal to amend the Foreign Affairs (Consular Loans) Bill is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.	

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
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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
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

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 Ministry does not consider the policy to be given effect by the Bill to be inconsistent with any international obligations. The policy to be given effect by this Bill is not novel. It has been part of Ministry practice for over 25 years. Providing financial assistance in exceptional circumstances for nationals offshore is also a common practice by many countries including New Zealand. The Bill enables continuation of the practice of issuing consular loans where necessary, by responding to an amendment to the Public Finance Act in 2013 which requires express statutory authority to lend money.

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 analysed the Bill and did not identify any implications nor inconsistencies with the rights and interests of Māori protected under 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 is currently completing its vetting process in accordance with section 7 of the New Zealand Bill of Rights Act 1990. The section 7 report of the Attorney-General is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill (<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>)

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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The Bill does however confirm consular loans to be a debt due to the Crown and recoverable in a court of competent jurisdiction.

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
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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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3.5.1. Was the Privacy Commissioner consulted about these provisions?	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
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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
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The Ministry of Foreign Affairs and Trade has provided consular loans to New Zealanders in distress offshore for over 25 years on the basis of the policy that underpins the Bill. The Bill re-affirms the current policy approach. MFAT is confident the provisions are workable and complete.

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?	YES
<p>The Bill retrospectively validates loans granted between July 2013 and June 2020 in the transition provision. The Legislation Design and Advisory Committee has confirmed that retrospective validation in this Bill could be justified and appropriate. The Legislative guidelines provide that retrospective effect in legislation might be appropriate if it is intended to “validate matters generally understood to be lawful, but that are, in fact, unlawful as a result of a technical error”.</p> <p>The absence of statutory authority for consular loans issued between 2013 – June 2020 was a technical error based on a mistaken application of an exemption from the Public Finance Act. In addition, legally validating these loans would confirm the status quo understood by the Ministry and the recipient of consular loans, and would not change the rights and responsibilities as understood between the two parties. The Ministry and each individual who was granted a loan between 2013 and June 2020 believed the loans to be valid. Loan recipients signed an undertaking to repay acknowledging they would owe a debt and understood that the money needed to be repaid. This approach would also support the rule of law as it would ensure the law is clear, consistent and enforceable and that all loan recipients are treated equally.</p>	

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?	NO
<p>The intent of the Bill is to be permissive, and to retain flexibility for the Minister of Foreign Affairs to respond to emergency circumstances as they arise. Several recent international events - including the response to Covid-19 - have underscored the need for flexibility to adjust policies to enable adequate consular support quickly in emergency circumstances. A prescriptive legislative framework which sought to predict all possible circumstances where a loan might be required and appropriate would inherently limit the ability of the Ministry, through the Minister, to respond quickly in specific cases. As such, it is intended that the Ministry's policies would set out in finer detail the scope of those eligible for consular loans, including immediate family members who may benefit from the consular loans and the situations which constitute "in distress" for the purpose of the Bill.</p>	