

Maritime Powers Bill

Government Bill

Explanatory note

General policy statement

The Maritime Powers Bill provides New Zealand law enforcement agencies with powers to enforce New Zealand’s criminal law in international waters. It does this in a manner consistent with New Zealand’s rights and obligations under international law, particularly the United Nations Convention on the Law of the Sea and international human rights obligations. It reflects the fundamental importance of maritime security to New Zealand as an island nation with an extensive maritime domain.

The Bill provides powers to respond to a range of criminal offending in international waters (ie, in the contiguous zones and exclusive economic zones of New Zealand and other States and on the high seas), including—

- offences that take place on board a New Zealand-flagged vessel in international waters; and
- offences that take place on board a foreign-flagged vessel or stateless vessel in international waters for which New Zealand has extraterritorial jurisdiction; and
- situations where an alleged offender or evidence of criminal offending is located on a New Zealand, foreign, or stateless vessel in international waters.

Consistent with section 8(2) of the Crimes Act 1961, the Bill does not provide powers that can be used in respect of every offence in New Zealand’s criminal law. The powers can only be used when the penalty for the offence is imprisonment for life or 2 or more years’ imprisonment. This threshold reflects that the Bill is intended to respond to serious criminal offending at sea, particularly transnational organised crime.

The Bill provides powers to “enforcement officers”, who are defined as constables, Customs officers, members of the Armed Forces, Department of Conservation rang-

ers, and Endangered Species Officers. This will enable the powers to be used to address a range of offending, including drugs trafficking and wildlife smuggling.

The powers in the Bill reflect those available under existing legislation, notably the Search and Surveillance Act 2012 and the Customs and Excise Act 2018. Enforcement officers may board and search the vessel and arrest suspects. The Bill also contains powers to help manage the situation on board the vessel, such as the power to require persons on board to remain in a particular place. The threshold at which the powers can be used also aligns with thresholds under existing legislation: where there are reasonable grounds to suspect that an offence has been, is being, or will be committed on board the vessel, and reasonable grounds to believe that the offender is on the vessel. The powers can be exercised without a warrant due to the potentially serious nature of the offending and the reality that these powers will be used at some distance from the shore where safety of life at sea is paramount. Consistent with existing legislation, the Bill requires that enforcement officers report on the use of these powers to the Commissioner of Police or chief executive of the relevant agency.

The Bill contains a broad clause that preserves the functions, duties, and powers under other Acts. This means that fisheries enforcement in New Zealand fisheries waters and on the high seas will remain subject to the Fisheries Act 1996. It also means that the New Zealand Defence Force will continue to participate in international operations without a law enforcement component in reliance on the Royal prerogative.

Departmental disclosure statement

The Ministry of Foreign Affairs and Trade is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=48>

Regulatory impact assessment

The Ministry of Foreign Affairs and Trade produced a regulatory impact assessment on 25 October 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://mfat.govt.nz/en/media-and-resources/proactive-release-maritime-powers-bill>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 provides that the purpose of the Bill is to—

- provide clear powers for the enforcement of New Zealand’s criminal law in international waters; and
- uphold New Zealand’s rights and obligations under international law, particularly UNCLOS and international human rights law.

Clause 4 defines terms used in the Bill.

Clause 5 defines extraterritorial offence. In broad terms, an extraterritorial offence is one where New Zealand has jurisdiction in respect of acts and omissions that occur wholly or partly outside New Zealand. The extraterritorial offences to which the powers in the Bill apply are those punishable by imprisonment for life or by 2 or more years’ imprisonment.

Extraterritorial jurisdiction over offences may arise in various ways. The main ways are as follows:

- some offence provisions specifically provide that the offence may be committed outside New Zealand (for example, as in the offence of piracy under section 92 of the Crimes Act 1961):
- certain acts and omissions occurring in places, or on ships and aircraft, outside New Zealand are punishable under New Zealand law by virtue of sections 7A and 8 of the Crimes Act 1961:
- certain offences consist of acts or omissions done outside New Zealand that, if done in New Zealand, would be an offence (for example, as in section 12C of the Misuse of Drugs Act 1975):
- under section 7 of the Crimes Act 1961, an offence is deemed to be committed in New Zealand if an act or omission forming part of the offence, or an event necessary to the completion of the offence, occurs in New Zealand. This applies whether the person charged with the offence was in New Zealand or not at the time of the act, omission, or event.

New Zealand’s jurisdiction to charge certain persons with the offences described above can be dependent on the person being present in New Zealand at the time proceedings are commenced. For example, under section 8 of the Crimes Act 1961, an act or omission done on a foreign ship by a person who is not a New Zealand citizen or ordinarily resident in New Zealand is punishable only if the person arrives in New Zealand on that ship in the course or at the end of a journey during which the act was done or omitted. *Clause 5(2)* of the Bill provides that in cases where jurisdiction to charge a person is dependent on a presence requirement, the powers in the Bill may be exercised if an enforcement officer has reasonable grounds to believe that the jour-

ney of the ship the person is on board is intended to end in New Zealand or that New Zealand is intended to be the next place in the course of the ship's journey.

Some offence provisions are drafted in a way that makes the consent of the flag State a necessary precondition to New Zealand having extraterritorial jurisdiction. *Subclause (3)* provides that this requirement may be satisfied by obtaining the consent of the flag State under the Bill.

Clause 6 defines the phrase "pursued without interruption". This phrase is relevant in *clause 12(2)(c) to (e)*, which provides that the consent of a flag State to exercise powers in relation to a foreign ship is not required in situations of hot pursuit.

Clause 7 inserts the transitional and savings provisions set out in *Schedule 1*.

Clause 8 provides that the Act binds the Crown.

Clause 9 provides that the Bill does not limit or affect the functions, duties, or powers of any person under any other enactment or rule of law. Various other regimes allow for the exercise of enforcement powers outside New Zealand's territorial sea, for example the Fisheries Act 1996 and the Marine Mammals Protection Act 1978. The Bill is not intended to limit those other regimes.

Clause 10 provides that nothing in the Bill limits the immunity of foreign military ships or aircraft, or foreign governmental ships operated for non-commercial purposes, or the crews of those ships or aircraft.

Part 2 Powers

Geographical application of powers in this Part

Clause 11 sets out the geographical application of the powers in *Part 2*. It provides that the Bill applies to any ship that is in international waters or foreign waters, as those terms are defined in *clause 4*. *Clause 11* is subject to *clause 33*, which provides that where the powers have been used in relation to a ship, item, or person outside New Zealand they may be used in New Zealand until the ship, item, or person arrives in the internal waters of New Zealand or reaches land in New Zealand. The reference to "any ship" needs to be read in light of other provisions of the Bill that narrow the potential application of the Bill in respect of certain foreign ships (*see especially clauses 10 and 12*).

Restriction on exercise of powers in relation to foreign ship

Clause 12 sets out a restriction on the application of the powers in *Part 2* to a foreign ship. In general terms, the use of the powers in relation to a foreign ship is subject to the consent of the ship's flag State. If the flag State attaches conditions to its consent, the exercise of powers is subject to those conditions also. There are some exceptions to the requirement for flag State consent. In respect of some offences New Zealand's jurisdiction is not dependent on flag State consent, either at all or within certain geographical areas. These are provided for in *subclause (2)(a) and (b)*. Also, flag State

consent is not required in cases of hot pursuit in the circumstances provided in Article 111 of UNCLOS. Those circumstances are set out in *subclause (2)(c) to (e) and subclauses (3) to (5)*.

Exercise of powers to verify nationality of ship

Clause 13 applies if an enforcement officer suspects that a ship is a ship without nationality. An enforcement officer may exercise the power under *clauses 17, 18, and 20(2)* to stop and board the ship without the need for the consent of a flag State for the purpose of verifying the nationality of the ship.

Restriction on exercise of powers in foreign waters

Clause 14 provides for a restriction on the exercise of powers under *Part 2* in foreign waters.

Effect of requirement for Attorney-General to consent to prosecution on exercise of powers

Clause 15 deals with the situation where an enactment provides that proceedings may be brought against a person for an extraterritorial offence only with the consent of the Attorney-General. This clause provides that powers may be exercised under the Bill even before that consent has been sought or obtained.

Grounds for exercising powers

Clause 16 sets out the grounds on which powers under this Part may be exercised. An enforcement officer may exercise powers under the Bill if the enforcement officer—

- has reasonable grounds to suspect that a person has committed, is committing, or will commit an offence that is an extraterritorial offence and reasonable grounds to believe that the person is on a ship; or
- has reasonable grounds to believe there is evidence on a ship of the commission of an extraterritorial offence; or
- has reasonable grounds to suspect a ship is involved in an extraterritorial offence; or
- has reasonable grounds to suspect that a person has committed a specified offence in New Zealand and reasonable grounds to believe that the person is on a ship; or
- has reasonable grounds to believe that there is evidence on a ship of the commission of a specified offence in New Zealand.

Also, powers under the Bill to stop, board, and search may be used for the purpose of verifying the nationality of a ship if an enforcement officer suspects on reasonable grounds that the ship is a ship without nationality.

A specified offence is defined in *clause 4* as an offence against New Zealand law punishable by imprisonment for life or by 2 or more years' imprisonment.

The grounds apply to each of the powers. For example, the power to board a ship under *clause 18* is dependent on the existence of 1 or more of the grounds in *clause 16*. Also, it is not necessary for the exercise of powers to always begin with the stopping of a ship. If a ship is already stopped for a lawful reason unrelated to law enforcement but an enforcement officer forms the view that the grounds in this clause exist, that may be the basis, for example, for a search of the ship under *clause 20*.

No warrant is needed for the exercise of powers under *Part 2*.

Powers

Clause 17 provides the power to stop a ship.

Clause 18 provides the power to board a ship.

Clause 19 requires an enforcement officer boarding a ship under *clause 18* to provide identifying details.

Clause 20 provides powers of search. *Subclause (1)* provides that an enforcement officer may—

- search a ship for a person who the enforcement officer has reasonable grounds to suspect has committed, is committing, or will commit an extraterritorial offence:
- search a ship and any person on the ship for evidence that an extraterritorial offence has been committed, is being committed, or will be committed:
- search a ship for a person who the enforcement officer has reasonable grounds to suspect has committed a specified offence in New Zealand:
- search a ship and any person on the ship for evidence of the commission of a specified offence in New Zealand.

Subclause (2) provides that if an enforcement officer suspects on reasonable grounds that a ship is a ship without nationality, an enforcement officer may search the ship for any evidence relevant to the nationality of the ship.

For the purpose of a search under this clause, an enforcement officer may use any force that is reasonable in the circumstances to enter or break open or access any area within the ship or a thing found on the ship (*see subclause (3)*).

Certain provisions of Part 4 of the Search and Surveillance Act 2012 apply (*see subclause (4)*).

Clause 21 provides that in certain circumstances (*see subclause (2)*), an enforcement officer may require a person on the ship to permit a medical practitioner to conduct an internal search of the person.

Clause 22 provides a power to require the production of documents or things.

Clause 23 provides for the power to detain a ship. The power is exercisable in relation to a ship only if, and for so long as, an enforcement officer is satisfied that the exercise of the power is reasonably necessary to enable the other powers in this Part to be

exercised in relation to the ship. The details of the powers relating to detention are set out in *subclauses (2) and (3)*.

Clause 24 applies to a person who is on a detained ship (or who an enforcement officer reasonably suspects was on the ship when it was detained). An enforcement officer has certain powers to require details from the person and to impose requirements regarding the movement of the person (*see subclauses (3) and (4)*). *Subclause (5)* specifies the duration of the application of this section to a person.

Clause 25 provides a power of arrest for an enforcement officer.

Clause 26 provides for the application of certain provisions of the Crimes Act 1961 and the Search and Surveillance Act 2012 in relation to the power of arrest under *Part 2*.

Clause 27 provides that an enforcement officer may for any purpose connected with the exercise of powers under *Part 2* cause a person or thing to be lifted from the sea.

Clause 28 provides a power to require biometric information from a person who is detained under *clause 24* or arrested under *clause 25*. The information may be taken and used to establish or verify the identity of the person for law enforcement purposes.

Other provisions concerning powers under this Part

Clause 29 provides that an enforcement officer may use reasonable force for the purpose of exercising a power under this Part.

Clause 30 provides that in enforcing a warrant for the arrest of a person that is in force under New Zealand law, an enforcement officer must comply with any requirements in the warrant that would have to be complied with by a person executing the warrant if it were executed in New Zealand.

Clause 31 provides that if a ship is a foreign ship, an enforcement officer must not interfere with any attempt by the person in charge of the ship to communicate with the authorities of the flag State at any time while powers under *Part 2* are being exercised.

Clause 32 provides for the disposal of unlawful items found on board a ship.

Continuation of powers under this Part in relation to ship, person, or item coming to New Zealand

Clause 33 applies where an operation involving the exercise of powers under this Part has begun in international waters and a ship, a person, or an item involved is transiting the territorial sea of New Zealand. This clause provides that the powers under *Part 2* continue to be available until the ship, person, or item arrives in the internal waters of New Zealand or reaches land in New Zealand.

Part 3

Offences, consent of flag State, immunities, and other matters

Offences

Clauses 34 to 36 provide for offences relating to threatening, obstructing, or failing to comply with an enforcement officer exercising powers under *Part 2*.

Obtaining consent of flag State or other State or relevant territory

Clause 37 provides that an enforcement officer must seek the authorisation of the Secretary of Foreign Affairs and Trade before powers are exercised under *Part 2* if—

- the consent of a flag state is required under *clause 12* for the exercise of powers in relation to a foreign ship; or
- the consent of a State is required under *clause 14* for the exercise of powers in foreign waters.

The Secretary of Foreign Affairs and Trade is responsible for seeking the consent.

Immunities

Clauses 38 and 39 provide immunity from liability in respect of good faith actions or omissions in the pursuance of duties, functions, or powers under the Bill. These are modelled on those in the Search and Surveillance Act 2012.

Clause 40 provides that no compensation is payable to the owner of a ship or any other person for the cost (for fuel or other provisions) of complying with a lawful direction under *clause 23* (that is, while a ship is detained).

Application of presence requirement to person arriving in New Zealand after powers exercised under this Act

Clause 41 relates to a presence requirement (as that term is defined in *clause 4*). In general terms, a presence requirement is where an enactment provides that a person is liable for an offence, or New Zealand's jurisdiction to bring proceedings against a person, is dependent on the person being present in New Zealand. This clause provides that for the purpose of any proceedings for an offence against a person who is in New Zealand, a presence requirement may be satisfied in respect of the person even though the person was brought to New Zealand on a ship detained under the Bill or in the course of any other action taken under the Bill.

Disclosure of personal information by enforcement officer

Clause 42 provides for the circumstances in which an enforcement officer may disclose personal information obtained in the exercise of powers under the Bill.

Forfeiture of ship in certain cases

Clause 43 provides that in certain circumstances a ship that arrives in New Zealand after being directed to do so under *clause 23(2)(b)(i)* will be forfeited to the Crown.

The circumstances relate to the ship having been involved in the commission of certain offences.

Reporting of exercise of powers under this Act

Clause 44 provides for the reporting by an enforcement officer of the exercise of powers under the Bill.

Clause 45 provides that when reporting to a flag State on the exercise of powers under the Bill, the Secretary of Foreign Affairs and Trade may disclose personal information if satisfied that it is reasonably necessary for the purpose of complying with any of New Zealand's international obligations.

Application to Tokelau

Clause 46 provides that the Bill will apply in Tokelau for the purpose of the offences in sections 4 to 6 of the Maritime Crimes Act 1999.

Amendment to Arms Act 1983

Clause 48 amends section 3(2) of the Arms Act 1983. Section 3(2) provides that nothing in the Arms Act 1983 renders unlawful the carriage or possession of arms items and certain other items if carried or possessed by persons set out in that provision. The amendment applies this provision to a member of the New Zealand Defence Force or a constable acting as an enforcement officer under the Bill.

Amendments to Customs and Excise Act 2018

Clauses 50 to 52 amend the Customs and Excise Act 2018 to repeal Schedule 5A of that Act (which relates to powers for dealing with drugs smuggling at sea outside New Zealand, etc) and related provisions.

Amendment to Fisheries Act 1996

Clause 54 amends the Fisheries Act 1996. The amendment provides that in section 215 of that Act (which relates to the general powers of a fishery officer) "freshly pursued" has the same meaning as "pursued without interruption" in *clause 6* of the Bill.

Amendments to Maritime Crimes Act 1999

Clauses 56 and 57 amend the Maritime Crimes Act 1999 to repeal sections 10A to 10G (which relate to enforcement powers for dealing at sea with the maritime crimes under that Act) and related provisions.

Amendment to Search and Surveillance Act 2012

Clause 59 amends the Schedule of the Search and Surveillance Act 2012 to insert appropriate references to the provisions of Part 4 of that Act that are applied in the Bill.

Hon Nanaia Mahuta

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Maritime Powers Act **2021**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to— 10

- (a) provide clear powers for the enforcement of New Zealand’s criminal law in international waters; and
- (b) uphold New Zealand’s rights and obligations under international law, particularly the United Nations Convention on the Law of the Sea and international human rights law. 15

4 Interpretation

(1) In this Act, unless the context otherwise requires,—

Armed Forces has the same meaning as in section 2(1) of the Defence Act 1990

biometric information, in relation to a person, means information that comprises— 20

- (a) 1 or more of the following kinds of information:
 - (i) a photograph of all or any part of the person’s head and shoulders:
 - (ii) impressions of the person’s fingerprints:
 - (iii) a scan of the person’s irises; and 25
- (b) a record, whether physical or electronic, of the personal information that is capable of being used for biometric matching

coastal State means a State described in **section 14(a)**

constable has the same meaning as in section 4 of the Policing Act 2008

contiguous zone, in relation to New Zealand, has the same meaning as in section 8A of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 30

continental shelf, in relation to New Zealand, has the same meaning as in section 2(1) of the Continental Shelf Act 1964

Customs officer has the same meaning as in section 5(1) of the Customs and Excise Act 2018

Customs place has the same meaning as in section 5(1) of the Customs and Excise Act 2018 5

enforcement officer means—

- (a) a constable:
- (b) a Customs officer:
- (c) a member of the Armed Forces: 10
- (d) an Endangered Species Officer within the meaning of section 35(1) of the Trade in Endangered Species Act 1989 or appointed under section 35(2) of that Act:
- (e) a ranger appointed under section 38(1) of the Wildlife Act 1953:
- (f) a warranted officer appointed under section 59(1) of the Conservation Act 1987 15

exclusive economic zone, in relation to New Zealand, has the same meaning as in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

extraterritorial offence has the meaning given to it in **section 5** 20

flag State, in relation to a ship, means the State in which the ship is registered or whose flag or marks of registry it is entitled to fly or display

foreign ship means a ship—

- (a) that is not a New Zealand ship; and
- (b) that— 25
 - (i) is registered in a State other than New Zealand; or
 - (ii) is entitled to fly the flag, or to display the marks of registry, of a State other than New Zealand

foreign waters means—

- (a) the sea and other waters within the outer limits of the territorial sea of a State other than New Zealand; and 30
- (b) the archipelagic waters of an archipelagic State

high seas means all parts of the sea not included in—

- (a) the internal waters, territorial sea, or exclusive economic zone of New Zealand or another State; or 35
- (b) the archipelagic waters of an archipelagic State

internal waters, in relation to New Zealand, has the same meaning as in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

international waters means all waters beyond—

- (a) the territorial sea of New Zealand or of any other State; and 5
- (b) the archipelagic waters of an archipelagic State

New Zealand means the land and waters enclosed by the outer limits of the territorial sea of New Zealand (as described in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977)

New Zealand ship has the same meaning as in section 2 of the Maritime Transport Act 1994 10

person in charge of the ship, in relation to a ship, means a person who an enforcement officer reasonably believes is in charge of the ship, and **person in charge of a ship** has a corresponding meaning

personal information has the same meaning as in section 7(1) of the Privacy Act 2020 15

presence requirement means an express provision in an enactment to the effect that a person is liable for an offence, or that proceedings may be brought against a person in respect of an offence, only if the person—

- (a) is present in New Zealand; or 20
- (b) has been found in New Zealand and has not been extradited; or
- (c) arrives in New Zealand on board a ship in the course or at the end of a journey during which the act or omission that is an offence against New Zealand law was done or omitted

pursued without interruption has the meaning given to it in **section 6** 25

ship has the same meaning as in section 2 of the Maritime Transport Act 1994

ship without nationality means a ship that—

- (a) is not registered in, or otherwise entitled to fly the flag or display the marks of registry of, any State; or
- (b) sails under the flags of 2 or more States or relevant territories, or under the flags of a State and a relevant territory, using them according to convenience 30

specified offence means an offence against New Zealand law punishable by imprisonment for life or by 2 or more years' imprisonment

territorial sea, in relation to New Zealand, has the same meaning as in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 35

unique identifier has the meaning given to it in the Search and Surveillance Act 2012.

- (2) For the purposes of this Act, a ship is **involved in an extraterritorial offence** if—
- (a) an extraterritorial offence has been, is being, or will be committed on the ship; or
 - (b) the ship has been, is, or is likely to be otherwise involved in the commission, or in facilitating the commission, of an extraterritorial offence. 5

5 Meaning of extraterritorial offence

- (1) In this Act, **extraterritorial offence**, in relation to a person, means—
- (a) an act or omission done by the person outside New Zealand or in any particular place outside New Zealand for which the person is liable on conviction under New Zealand law to imprisonment for life or to 2 or more years' imprisonment; or 10
 - (b) an offence against New Zealand law for which the person is liable on conviction to imprisonment for life or to 2 or more years' imprisonment because of an enactment providing that an act or omission of the person or any other person that occurred outside New Zealand is deemed to have occurred in New Zealand. 15

Effect of presence requirement

- (2) For the purpose of exercising powers under this Act, an offence that has a presence requirement in relation to a person may be treated as an extraterritorial offence under **subsection (1)** in relation to that person if an enforcement officer has reasonable grounds to believe that the journey of the ship the person is on board is intended to end in New Zealand or that New Zealand is intended to be the next place in the course of the ship's journey. 20

Effect of requirement for flag State consent for extraterritorial jurisdiction 25

- (3) If an enactment other than this Act has the effect that an act or omission done outside New Zealand by a person is an extraterritorial offence as described in **subsection (1)** only if the consent of a flag State is given to New Zealand exercising jurisdiction,—
- (a) the requirement for the consent of the flag State may be satisfied under this Act; and 30
 - (b) if that requirement is satisfied under this Act, it is treated as having been satisfied at all times in relation to the other enactment.

6 Meaning of pursued without interruption

- (1) A ship is **pursued without interruption** if— 35
- (a) the person in charge of the ship is required by an enforcement officer, or other person having lawful authority to do so, to stop the ship or facilitate boarding of the ship; and

- (b) the requirement is made by the giving of a visual or an auditory signal to stop (which, without limitation, may consist of hailing the ship by radio); and
- (c) the requirement is not complied with; and
- (d) the ship is pursued from that place; and 5
- (e) the pursuit is not interrupted.
- (2) For the purpose of **subsection (1)(e)**, a pursuit is not interrupted only because—
- (a) it is continued by an enforcement officer, or other person having lawful authority to do so, other than the person who made the requirement referred to in **subsection (1)(a)**; or 10
- (b) it is begun, or taken over, by a ship or an aircraft (including a ship or an aircraft of another State) other than the ship or aircraft from which the requirement was made; or
- (c) if the pursuit is continued by a ship or aircraft of another State, there is no enforcement officer on board the ship or aircraft; or 15
- (d) the ship being pursued is out of sight of any or all of the enforcement officers, or officers of a foreign State, involved in the pursuit; or
- (e) the ship cannot be tracked by radio, radar, satellite, sonar, or any other remote means. 20
- 7 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- 8 Act binds the Crown**
- This Act binds the Crown. 25
- 9 Act does not limit other functions, duties, or powers**
- (1) Unless otherwise provided in this Act, this Act does not limit or affect the functions, duties, or powers of any person under any other enactment or rule of law.
- (2) Without limiting **subsection (1)**, nothing in this Act—
- (a) limits powers exercisable in accordance with New Zealand’s rights and obligations under international law under any enactment or otherwise in internal waters, the territorial sea, the contiguous zone, the exclusive economic zone, the high seas, or with respect to the continental shelf; or 30
- (b) extinguishes any power or authority exercisable by virtue of the prerogative of the Crown. 35
- 10 Immunities of warships, etc, not affected**
- Nothing in this Act limits the immunities of the following:

- (a) any foreign warship:
- (b) any other foreign governmental ship operated for non-commercial purposes:
- (c) any foreign military aircraft:
- (d) members of the crew of any ship or aircraft to which **paragraphs (a) to (c)** apply. 5

Part 2 Powers

Geographical application of powers in this Part

- 11 Geographical application of powers in this Part** 10
- (1) This Act applies to any ship that is in any of the following:
 - (a) international waters:
 - (b) foreign waters.
 - (2) This section is subject to **section 33**.

Restriction on exercise of powers in relation to foreign ship 15

- 12 Restriction on exercise of powers in relation to foreign ship**
- (1) In relation to a foreign ship, the powers under this Act are exercisable—
 - (a) only if, and to the extent that, the flag State has consented to the exercise of the powers; and
 - (b) subject to any conditions that the flag State attaches to its consent. 20
 - (2) Consent is not required under **subsection (1)** (and that subsection does not apply) if the powers under this Act are exercised—
 - (a) in respect of an offence dealt with in—
 - (i) sections 92 to 97 of the Crimes Act 1961 (which relate to piracy); or 25
 - (ii) section 98 of the Crimes Act 1961 (which relates to dealing in slaves); or
 - (b) in the exclusive economic zone in respect of an offence against—
 - (i) the Marine Mammals Protection Act 1978; or
 - (ii) the Wildlife Act 1953 in respect of marine wildlife; or 30
 - (c) after a ship has been pursued without interruption from New Zealand in respect of a contravention of New Zealand law; or

- (d) after a ship has been pursued without interruption from within the contiguous zone to investigate or prevent a contravention of New Zealand's customs, fiscal, immigration, or sanitary laws in New Zealand; or
- (e) after a ship has been pursued without interruption from within the exclusive economic zone to investigate or prevent an offence against— 5
- (i) the Marine Mammals Protection Act 1978; or
- (ii) the Wildlife Act 1953 in respect of marine wildlife.
- (3) For the purpose of **subsection (2)(c)**, a pursuit begun against a ship outside New Zealand is to be treated as a pursuit of that ship from New Zealand if—
- (a) that ship and 1 or more other ships are working as a team in relation to any matter that forms grounds for the exercise of powers under this Act; and 10
- (b) at least 1 of the ships is in New Zealand at the time the pursuit begins.
- (4) For the purpose of **subsection (2)(d)**, a pursuit begun against a ship outside the contiguous zone is to be treated as a pursuit of that ship from within the contiguous zone if— 15
- (a) 2 or more ships are working as a team in relation to any matter that forms grounds for the exercise of powers under this Act; and
- (b) at least 1 of the ships is within the contiguous zone at the time the pursuit begins. 20
- (5) For the purpose of **subsection (2)(e)**, a pursuit begun against a ship outside the exclusive economic zone is to be treated as a pursuit of that ship from within the exclusive economic zone if—
- (a) 2 or more ships are working as a team in relation to any matter that forms grounds for the exercise of powers under this Act; and 25
- (b) at least 1 of the ships is within the exclusive economic zone at the time the pursuit begins.

Exercise of powers to verify nationality of ship

13 Power to verify nationality of ship without consent of flag State

- (1) This section applies in relation to a ship that an enforcement officer suspects on reasonable grounds is a ship without nationality. 30
- (2) An enforcement officer may exercise the powers described in **section 16(2)** without the need for the consent of a flag State.
- (3) If, after exercising all or any of the powers described in **section 16(2)**, an enforcement officer is satisfied that a ship has nationality, **section 12** applies in respect of the further exercise of powers under this Part. 35

*Restriction on exercise of powers in foreign waters***14 Restriction on exercise of powers in foreign waters**

The powers under this Act may be exercised in foreign waters—

- (a) only if, and to the extent that, the State in whose waters the powers would be exercised has consented to the exercise of the powers; and 5
- (b) subject to any conditions that the State attaches to its consent.

*Effect of requirement for Attorney-General to consent to prosecution on exercise of powers***15 Effect of requirement for Attorney-General to consent to prosecution on exercise of powers** 10

If an enactment provides that proceedings may be brought against a person for an extraterritorial offence only with the consent of the Attorney-General, powers may be exercised under this Act even before that consent has been sought or obtained.

Grounds for exercising powers 15**16 Grounds for exercising powers**

- (1) An enforcement officer may exercise the powers in this Part only if—
 - (a) the enforcement officer—
 - (i) has reasonable grounds to suspect that a person has committed, is committing, or will commit an offence that is an extraterritorial offence; and 20
 - (ii) has reasonable grounds to believe that the person is on a ship; or
 - (b) the enforcement officer has reasonable grounds to believe there is evidence on a ship of the commission of an extraterritorial offence; or
 - (c) the enforcement officer has reasonable grounds to suspect a ship is involved in an extraterritorial offence; or 25
 - (d) the enforcement officer —
 - (i) has reasonable grounds to suspect that a person has committed a specified offence in New Zealand; and
 - (ii) has reasonable grounds to believe that the person is on a ship; or 30
 - (e) the enforcement officer has reasonable grounds to believe that there is evidence on a ship of the commission of a specified offence in New Zealand.
- (2) Despite **subsection (1)**, the powers in **sections 17, 18, and 20(2)** may be used for the purpose of verifying the nationality of a ship if an enforcement 35

officer suspects on reasonable grounds that the ship is a ship without nationality.

- (3) If, after exercising all or any of the powers described in **subsection (2)**, an enforcement officer is satisfied that a ship is without nationality, the powers under this Part may be exercised in relation to the ship as if it were a New Zealand ship. 5
- (4) No warrant is needed for the exercise of powers under this Part.

Powers

17 Stopping

- (1) An enforcement officer may require the person in charge of a ship to stop the ship. 10
- (2) The requirement is made whether or not the person in charge of the ship understands or is aware of the requirement.
- (3) If the person in charge of the ship does not comply with a requirement under **subsection (1)**, an enforcement officer may— 15
- (a) chase the ship:
 - (b) if the ship continues to fail to stop, do 1 or more of the following:
 - (i) use any reasonable means to obstruct the passage of the ship:
 - (ii) use any reasonable means to halt or slow the passage of the ship, including by fouling the propellers of the ship: 20
 - (iii) fire a warning shot:
 - (c) as a last resort, after having fired a warning shot, fire at or onto the ship to compel it to stop.
- (4) When exercising powers under this section, an enforcement officer must have regard to— 25
- (a) the safety and welfare of those on board the ship that is being stopped; and
 - (b) the safety and welfare of those on board the pursuing ship; and
 - (c) the protection of the marine environment.

18 Boarding 30

- (1) An enforcement officer may board a ship.
- (2) An enforcement officer may require the person in charge of a ship to take reasonable steps to facilitate the boarding of the ship.
- (3) The requirement may be made by any reasonable means.

19 Requirement to identify

An enforcement officer who exercises the power to board a ship or, if more than 1 enforcement officer boards the ship, the enforcement officer in charge of the boarding of the ship must, before or after boarding the ship,—

- (a) identify himself or herself to the person in charge of the ship, either by name or by unique identifier; and 5
- (b) state that the power to board the ship is being exercised under this Act and the reason for it unless it is impracticable to do so in the circumstances; and
- (c) if the enforcement officer is not in uniform, produce evidence of the officer's identity. 10

20 Searching

- (1) An enforcement officer may—
 - (a) search a ship for a person who the enforcement officer has reasonable grounds to suspect has committed, is committing, or will commit an extraterritorial offence: 15
 - (b) search a ship and any person on the ship for evidence that an extraterritorial offence has been committed, is being committed, or will be committed:
 - (c) search a ship for a person who the enforcement officer has reasonable grounds to suspect has committed a specified offence in New Zealand: 20
 - (d) search a ship and any person on the ship for evidence of the commission of a specified offence in New Zealand.
- (2) If an enforcement officer suspects on reasonable grounds that a ship is a ship without nationality, an enforcement officer may search the ship for any evidence relevant to the nationality of the ship. 25
- (3) For the purpose of **subsections (1) and (2)**, an enforcement officer may use any force that is reasonable in the circumstances to enter or break open or access any area within the ship or a thing found on the ship.
- (4) Subparts 1 and 4 (except section 121) and subparts 5 and 6 (except section 160) of Part 4 of the Search and Surveillance Act 2012 apply. 30
- (5) **Subsection (3)** does not limit any provision of the Search and Surveillance Act 2012 applied by **subsection (4)**.
- (6) The power to search a person or thing under this section may be exercised on the ship or elsewhere. 35

21 Internal search of person

- (1) In the circumstances set out in **subsection (2)**, an enforcement officer may require a person on the ship to permit a medical practitioner, nominated for the

- purpose by the enforcement officer, to conduct an internal examination of any part of the person's body by means of—
- (a) an X-ray machine or other similar device; or
 - (b) a manual or visual examination (whether or not facilitated by any instrument or device) through any body orifice. 5
- (2) The circumstances are that—
- (a) the person is under arrest for an offence against section 6, 11, 12C, 12E, or 12F of the Misuse of Drugs Act 1975; and
 - (b) the enforcement officer has reasonable grounds to believe that the person has secreted within his or her body any property— 10
 - (i) that may be evidence of the offence with which the person is charged; or
 - (ii) the possession of which by the person constitutes any other offence against section 6, 11, 12C, 12E, or 12F of the Misuse of Drugs Act 1975. 15
- (3) A medical practitioner must not conduct an internal examination if he or she—
- (a) considers that to do so may be prejudicial to the person's health; or
 - (b) is satisfied that the person is not prepared to permit an internal examination to be conducted.
- (4) The power under this section may be exercised on the ship or elsewhere. 20
- 22 Requiring production of document or thing**
- (1) An enforcement officer may require a person on board a ship to produce any document or thing.
 - (2) If anything required to be produced under **subsection (1)** is stored, or is accessible, on or from any electronic device on the ship, the power in that subsection includes (without limitation) the power to require the person to operate the device as is reasonably necessary. 25
 - (3) Section 60 of the Evidence Act 2006 applies in relation to a requirement under **subsection (1)**.
- 23 Detention of ship** 30
- (1) A power in **subsection (2)** is exercisable in relation to a ship only if, and for so long as, an enforcement officer is satisfied that the exercise of the power is reasonably necessary to enable the other powers in this Part to be exercised in relation to the ship.
 - (2) An enforcement officer— 35
 - (a) may detain the ship at the place where it is stopped under **section 17**:
 - (b) may direct—

- (i) that the ship proceed to the nearest Customs place or to any other place (in New Zealand or elsewhere) that the officer considers appropriate; and
- (ii) that the ship's detention continue during the ship's journey to that place, and at that place once the ship arrives there. 5
- (3) If a direction is given under **subsection (2)(b)**, an enforcement officer may, for the purpose of implementing the direction, do any of the following:
- (a) direct any person on the ship to take any specified action:
- (b) take charge of the ship:
- (c) arrange for the ship to be towed by another ship. 10
- (4) If a ship is detained under this section, an enforcement officer must give written notice of the detention to the person in charge of the ship.
- (5) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further written notice by an enforcement officer.
- 24 Powers in relation to persons on detained ship 15**
- (1) This section applies to a person—
- (a) on a ship detained under **section 23**; or
- (b) who an enforcement officer reasonably suspects was on the ship when it was detained.
- (2) The person is detained under this section until this section ceases to apply to the person in accordance with **subsection (5)**. 20
- (3) An enforcement officer may take 1 or more of the actions in **subsection (4)** if the enforcement officer is satisfied that—
- (a) it is necessary to do so to facilitate the conduct of a search; or
- (b) it is necessary to mitigate a risk to the safety of any person (including an enforcement officer) on board a ship; or 25
- (c) it is necessary to avoid evidence being destroyed, concealed, altered, damaged, or removed; or
- (d) there is no other reasonably practicable option in the circumstances, given the nature of the powers being exercised; or 30
- (e) it is necessary to protect the health of any person or public health in New Zealand or elsewhere.
- (4) The enforcement officer may—
- (a) require the person to supply the person's—
- (i) full legal name and any other name by which they are commonly known; and 35
- (ii) date of birth; and

- (iii) residential address; and
 - (iv) nationality; or
 - (b) require the person to remain in the ship or in a particular place on the ship; or
 - (c) transfer the person to another ship; or 5
 - (d) return the person to the ship.
 - (5) This section ceases to apply to a person when the earliest of the following occurs:
 - (a) if the person is on the ship referred to in **subsection (1)**, the ship ceases to be detained: 10
 - (b) if the person is not, or is no longer, on the ship referred to in **subsection (1)**, an enforcement officer is satisfied that continued detention of the person is no longer reasonably necessary to—
 - (i) enable the powers in this Part to be exercised in relation to the person; or 15
 - (ii) bring the person to a place of safety:
 - (c) the person is arrested under this Part.
 - (6) **Subsection (5)** does not prevent the arrest or detention of the person under an enactment other than this Act.
 - (7) Nothing in this section limits section 116 of the Search and Surveillance Act 2012. 20
- 25 Power of arrest**
- (1) An enforcement officer may arrest a person if the enforcement officer has reasonable grounds to believe that the person—
 - (a) is committing or has committed an extraterritorial offence; or 25
 - (b) has committed a specified offence in New Zealand.
 - (2) If an enforcement officer who is not a constable arrests a person under this section, the enforcement officer must, as soon as practicable after the person arrested arrives in the internal waters of New Zealand or reaches land in New Zealand (unless the person is sooner released), deliver the arrested person into the custody of a constable. 30
 - (3) Nothing in this section limits the application of section 315 of the Crimes Act 1961.
- 26 Application of certain provisions in relation to power of arrest**
- (1) The following provisions apply in relation to the use of the power of arrest 35 under this Part:
 - (a) sections 30 to 41 and 316(1) of the Crimes Act 1961; and

- (b) sections 82 and 85 to 88 of the Search and Surveillance Act 2012.
- (2) The provisions specified in **subsection (1)** apply regardless of whether the person arrested is a New Zealand citizen or ordinarily resident in New Zealand or where the arrest is made.
- (3) The requirement in section 316(5) of the Crimes Act 1961 applies in relation to a person arrested under this Part not from the time of the person's arrest but from the time the person arrives in the internal waters of New Zealand or reaches land in New Zealand. 5
- 27 Lifting person or thing from the sea**
- An enforcement officer may for any purpose connected with the exercise of powers under this Part cause a person or thing to be lifted from the sea. 10
- 28 Requiring biometric information**
- (1) The following persons may be required by an enforcement officer to allow any biometric information to be taken for 1 or more of the purposes in **subsection (2)**: 15
- (a) a person who is detained under **section 24**;
- (b) a person who has been arrested under **section 25**.
- (2) Biometric information may be taken and used to establish or verify the identity of the person referred to in **subsection (1)** for law enforcement purposes.
- Other provisions concerning powers under this Part* 20
- 29 Use of force**
- An enforcement officer may use reasonable force for the purpose of exercising a power under this Part.
- 30 Enforcing warrants**
- In enforcing a warrant for the arrest of a person that is in force under New Zealand law, an enforcement officer must comply with any requirements in the warrant that would have to be complied with by a person executing the warrant if it were executed in New Zealand. 25
- 31 No interference with communication with flag State**
- If a ship is a foreign ship, an enforcement officer must not interfere with any attempt by the person in charge of the ship to communicate with the authorities of the flag State at any time while powers under this Part are being exercised. 30
- 32 Disposal of unlawful items**
- (1) This section applies if an enforcement officer finds on board a ship any item the enforcement officer believes on reasonable grounds is an item— 35
- (a) the possession of which is unlawful under New Zealand law; or

- (b) the importation or exportation of which, or trade in which, is unlawful under New Zealand law.
- (2) The item is forfeited to the Crown and must be seized by an enforcement officer and dealt with in accordance with this section.
- (3) The enforcement officer may, subject to any requirement of the Biosecurity Act 1993, deliver the item to a constable or destroy or otherwise dispose of the item. 5
- (4) Despite **subsection (3)**, if the item is a specimen, the enforcement officer must—
- (a) hold the specimen on board the ship pending an assessment by an inspector under the Biosecurity Act 1993; or 10
- (b) deliver the specimen to an inspector.
- (5) If an inspector removes or is delivered a specimen in accordance with **subsection (4)**, the inspector—
- (a) must consult the Director-General of Conservation; and 15
- (b) may deliver the specimen to the Director-General of Conservation.
- (6) If an inspector delivers a specimen to the Director-General of Conservation as described in **subsection (5)(b)**, the inspector may also deliver a notice to the Director-General stating one of the following:
- (a) that the specimen has been given a biosecurity clearance: 20
- (b) that the specimen—
- (i) has not been given a biosecurity clearance; and
- (ii) must be held, handled, or managed in the manner specified in the notice.
- (7) In this section,— 25
- inspector** has the same meaning as in section 2 of the Biosecurity Act 1993
- specimen** means a specimen of—
- (a) wildlife within the meaning of that term in the Wildlife Act 1953, whether live or dead or complete or incomplete:
- (b) an endangered species, a threatened species, or an exploited species 30 within the meaning of those terms in section 3(1) of the Trade in Endangered Species Act 1989.

Continuation of powers under this Part in relation to ship, person, or item coming to New Zealand

33 Continuation of powers under this Part in relation to ship, person, or item coming to New Zealand

- (1) This section applies if a ship or an item in respect of which, or a person in respect of whom, powers have been exercised under this Part arrives in New Zealand. 5
- (2) The powers under this Part continue to be available until the ship, person, or item arrives in the internal waters of New Zealand or reaches land in New Zealand. 10

Part 3

Offences, consent of flag State, immunities, and other matters

Offences

34 Threatening, obstructing, or failing to comply with enforcement officer

- (1) A person commits an offence if the person— 15
- (a) threatens or intentionally obstructs an enforcement officer in the execution of the enforcement officer's powers under **Part 2**; or
- (b) fails without reasonable excuse to comply with a requirement imposed by an enforcement officer under **Part 2**.
- (2) A person who provides information in response to a requirement imposed by an enforcement officer under **Part 2** commits an offence if— 20
- (a) the information is false or misleading in any material respect and the person either knows it is or is reckless as to whether it is; or
- (b) the person intentionally fails to disclose any material particular.
- (3) A person who commits an offence against **subsection (1)(a)** is liable on conviction to imprisonment for a term not exceeding 12 months. 25
- (4) A person who commits an offence against **subsection (1)(b)** is liable on conviction to imprisonment for a term not exceeding 3 months.
- (5) A person who commits an offence against **subsection (2)** is liable on conviction to imprisonment for a term not exceeding 6 months. 30
- (6) An enforcement officer may exercise powers under **Part 2** in respect of a person who the enforcement officer has reasonable grounds to suspect has committed an offence against this section.

35 Application and further provision regarding offence

- (1) **Section 34** applies— 35

- (a) whether or not the act or omission constituting the offence occurred in or outside New Zealand; and
- (b) regardless of whether the person is a New Zealand citizen or ordinarily resident in New Zealand or the act or omission was done on a New Zealand ship. 5
- (2) Nothing in section 8 of the Crimes Act 1961 (which relates to jurisdiction in respect of crimes on ships and aircraft beyond New Zealand) applies with respect to any proceedings brought under **section 34**.
- 36 Consent of Attorney-General to prosecution**
- (1) No charging document may be filed for an offence against **section 34** except with the consent of the Attorney-General. 10
- (2) A person who is alleged to have committed an offence against **section 34** may be arrested (under **Part 2** or otherwise) and may be remanded in custody or on bail, even if the Attorney-General's consent to the filing of the charging document has not been obtained, but no further or other proceedings may be taken until that consent has been obtained. 15
- Obtaining consent of flag State or other State or relevant territory*
- 37 Secretary of Foreign Affairs and Trade responsible for seeking consent**
- (1) An enforcement officer must seek the authorisation of the Secretary of Foreign Affairs and Trade before powers are exercised under **Part 2** if— 20
- (a) the consent of a flag State is required under **section 12** for the exercise of powers in relation to a foreign ship; or
- (b) the consent of a coastal State is required under **section 14** for the exercise of powers in foreign waters.
- (2) The Secretary of Foreign Affairs and Trade is responsible for seeking any consent referred to in **subsection (1)(a) or (b)**. 25
- (3) The Secretary of Foreign Affairs and Trade may disclose personal information to the flag State if the Secretary of Foreign Affairs is satisfied that it is reasonably necessary for the purpose of enabling the flag State to deal with the request for consent. 30
- (4) A certificate given by the Secretary of Foreign Affairs and Trade of the terms of an authorisation referred to in **subsection (1)** is conclusive evidence for all purposes of the matters stated in it.

Immunities

38 Immunities

- (1) A 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 under this Act if— 5
- (a) the actions or omissions are reasonable; and
- (b) the person believes on reasonable grounds that the preconditions for the performance or exercise of the duty, function, or power have been satisfied.
- (2) A 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. 10
- (3) In any civil proceeding in which a person asserts that they have an immunity under this section, the onus is on them to prove those facts necessary to establish the basis of the claim. 15
- Compare: 2012 No 24 s 166

39 Immunity of the Crown

- (1) If a person is immune from civil liability under **section 38** in respect of anything done or omitted to be done, the Crown is also immune from civil liability in tort in respect of that person's conduct. 20
- (2) For the purposes of this section, the **Crown** includes Crown entities.
- Compare: 2012 No 24 s 167

40 No entitlement to compensation

No compensation is payable to the owner of a ship or any other person for the cost (for fuel or other provisions) of complying with a lawful direction under **section 23**. 25

Application of presence requirement to person arriving in New Zealand after powers exercised under this Act

41 Application of presence requirement to person arriving in New Zealand after powers exercised under this Act 30

For the purpose of any proceedings for an offence against a person who is in New Zealand, a presence requirement may be satisfied in respect of the person even though the person was brought to New Zealand on a ship detained under this Act or in the course of any other action taken under this Act.

*Disclosure of personal information by enforcement officer***42 Disclosure of personal information by enforcement officer**

An enforcement officer may disclose personal information obtained in the exercise of powers under this Act to a public sector agency in New Zealand as if the information had been obtained in New Zealand by the officer in the capacity in which the officer is included in the definition of enforcement officer in **section 4**. 5

*Forfeiture of ship in certain cases***43 Forfeiture of ship in certain cases**

- (1) A ship is forfeited to the Crown if it arrives in New Zealand under a direction given under **section 23(2)(b)(i)** and any of the following apply: 10
- (a) a drugs smuggling offence has been, or is being, committed on the ship:
 - (b) the ship has been, or is, otherwise involved in the commission, or in facilitating the commission, of a drugs smuggling offence:
 - (c) any of the following offences has been or is being committed on the ship: 15
 - (i) an offence against sections 92 to 97 of the Crimes Act 1961 (which relate to piracy):
 - (ii) an offence against section 98 of the Crimes Act 1961 (which relates to dealing in slaves): 20
 - (iii) an offence against section 98AA of the Crimes Act 1961 (which relates to dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour):
 - (iv) any offence against sections 98B to 98F of the Crimes Act 1961 (which relate to smuggling and trafficking in people): 25
 - (d) an offence relating to the unlawful importation of goods into New Zealand has been, or is being committed on the ship.
- (2) If a ship is treated as forfeited under this section, sections 176(3) and 177 to 189 of the Customs and Excise Act 2018 apply as if the forfeiture arose under that Act. 30
- (3) In this section, **drugs smuggling offence** means an offence—
- (a) under section 6(2) or (2A) of the Misuse of Drugs Act 1975 in relation to a contravention of, or a conspiracy to contravene, section 6(1)(a) of that Act; or
 - (b) under section 12AB(1) of the Misuse of Drugs Act 1975; or 35
 - (c) under section 12C of the Misuse of Drugs Act 1975 in relation to an act or omission that would be an offence—

- (i) under section 6(2) or (2A) of the Misuse of Drugs Act 1975 in relation to a contravention of, or a conspiracy to contravene, section 6(1)(a) of that Act; or
- (ii) under section 12AB(1) of the Misuse of Drugs Act 1975; or
- (d) under section 12E or 12F of the Misuse of Drugs Act 1975. 5

Reporting of exercise of powers under this Act

44 Reporting of exercise of powers under this Act

- (1) An enforcement officer who exercises any power under this Act must provide a written report on the exercise of that power as soon as practicable after the exercise of the power. 10
- (2) The report must be made,—
 - (a) if the enforcement officer is a constable, to the Commissioner of Police or a Police employee designated to receive reports of that kind by the Commissioner; and
 - (b) if the enforcement officer is other than a constable, to a person designated by the chief executive of any relevant agency to receive reports of that kind from the enforcement officer; and 15
 - (c) to the Secretary of Foreign Affairs and Trade.
- (3) The report must—
 - (a) contain a short summary of the circumstances of the exercise of the power, and the reason or reasons why the power needed to be exercised; and 20
 - (b) state whether any evidential material was seized or obtained as a result of the exercise of the power; and
 - (c) state whether any criminal proceedings have been brought or are being considered as a consequence of the seizure of that evidential material. 25
- (4) This section does not require a report in respect of a rub-down search of a person under section 85 or 88 of the Search and Surveillance Act 2012 (as applied by **section 26** of this Act) that is undertaken in conjunction with that person's arrest or detention under this Act. 30

Compare: 2012 No 24 s 169

45 Reporting of exercise of powers to flag State or coastal State

When reporting to a flag State or coastal State on the exercise of powers under this Act, the Secretary of Foreign Affairs and Trade may disclose personal information if satisfied that it is reasonably necessary for the purpose of complying with any of New Zealand's international obligations. 35

*Application to Tokelau***46 Application to Tokelau**

- (1) This Act is in force in Tokelau for the purpose of the offences in sections 4 to 6 of the Maritime Crimes Act 1999.
- (2) In the application of this Act to Tokelau, unless the context otherwise requires,—
- (a) a reference in this Act to New Zealand (when used as a territorial description) is a reference to Tokelau:
- (b) a reference to New Zealand’s internal waters, territorial sea, or exclusive economic zone is a reference to Tokelau’s internal waters, territorial sea, or exclusive economic zone within the meaning of the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977.

*Amendment to Arms Act 1983***47 Principal Act**

Section 48 amends the Arms Act 1983 15

48 Section 3 amended (Act to bind the Crown)

After section 3(2)(ab), insert:

- (ac) by a member of the New Zealand Defence Force or a constable who is an enforcement officer as defined in **section 4(1)** of the Maritime Powers Act **2021** in the course of exercising any power or performing any function under that Act: 20

*Amendments to Customs and Excise Act 2018***49 Principal Act**

Sections 50 to 52 amend the Customs and Excise Act 2018.

50 Section 4 amended (Overview of Act) 25

In section 4(5), delete “(including Schedule 5A)”.

51 Section 176 amended (Goods forfeited)

Repeal section 176(1)(v).

52 Repeal of section 267A and Schedule 5A (Powers for dealing with drugs smuggling outside New Zealand, etc) 30

- (1) Repeal section 267A.
- (2) Repeal Schedule 5A.

Amendment to Fisheries Act 1996

- 53 Principal Act**
Section 54 amends the Fisheries Act 1996
- 54 Section 215 amended (General powers)**
 After section 215(3), insert: 5
- (4) In this section, **freshly pursued** has the same meaning as **pursued without interruption** in **section 6** of the Maritime Powers Act **2021**, and **fresh pursuit** has a corresponding meaning.

Amendments to Maritime Crimes Act 1999

- 55 Principal Act** 10
Sections 56 and 57 amend the Maritime Crimes Act 1999
- 56 Section 2 amended (Interpretation)**
 In section 2, repeal the definition of **enforcement officer**.
- 57 Repeal of heading and sections 10A to 10G**
 Repeal sections 10A to 10G and the cross-heading above section 10A. 15

Amendment to Search and Surveillance Act 2012

- 58 Principal Act**
Section 59 amends the Search and Surveillance Act 2012.
- 59 Schedule amended (Powers in other enactments to which all or part of Part 4 of Search and Surveillance Act 2012 applies)** 20
 In the Schedule, insert in its appropriate alphabetical order the item set out in **Schedule 2** of this Act.

Schedule 1
Transitional, savings, and related provisions

s 7

Part 1
Provisions relating to this Act as enacted

5

1 Exercise of powers in progress under repealed enforcement provisions in Customs and Excise Act 2018 or Maritime Crimes Act 1999

- (1) In this clause, **relevant regime** means—
- (a) Schedule 5A of the Customs and Excise Act 2018; or
 - (b) sections 10A to 10G of the Maritime Crimes Act 1999. 10
- (2) **Subclause (3)** applies if a power under a relevant regime has been exercised before the commencement of this Act in respect of a person or ship (whether or not the exercise of the power is completed before that date).
- (3) The relevant regime continues to apply as if this Act had not been enacted in relation to— 15
- (a) the completion of the exercise of a power referred to in **subclause (2)**; and
 - (b) the exercise of any other power in the relevant regime in relation to that person or ship; and
 - (c) the completion of any matter arising from the exercise of any of those powers. 20

Schedule 2
Amendment to Search and Surveillance Act 2012

s 59

Maritime Powers Act 2021	20	Searching	Subparts 1 and 4 (except section 121) and subparts 5 and 6 (except section 160)
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