

**Legislative Statement
for
The Counter-Terrorism Legislation Bill**

**Presented to the House of Representatives
In accordance with Standing Order 272
Second Reading**

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Introduction

- 1 The purpose of the Counter-Terrorism Legislation Bill (**Bill**) is to strengthen New Zealand's counter-terrorism legislation to better respond to contemporary terrorist threats.
- 2 The Bill improves the clarity of the Terrorism Suppression Act 2002 (**TSA**) and provides law enforcement agencies with clear legal authority to prevent and disrupt terrorism-related activity. The Bill amends the TSA and the Terrorism Suppression (Control Orders) Act 2019 (**Control Orders Act**).

Background

- 3 In late 2018, the Prime Minister and then the Minister of Justice directed officials to explore possible improvements to counter-terrorism legislation to ensure the legislation remains clear and effective, with a strong focus on early intervention and prevention. The work was expedited following the terrorist attack on Christchurch masjidain on 15 March 2019.
- 4 Since the TSA was developed, the nature of terrorism has changed and we are seeing more lone actors or small groups rather than members of prominent organised terrorist groups.
- 5 In addition, the Royal Commission of Inquiry into the Terrorist Attack on Christchurch masjidain on 15 March 2019 (**Royal Commission**) highlighted issues with our counter-terrorism legislation and the need for regulatory stewardship. In particular, the Royal Commission was concerned with the absence of precursor offences that criminalise behaviours that occur before acts of terrorism. It found that the absence of precursor offences leaves open a gap in which potential terrorists can plan and prepare acts of terrorism without committing criminal offences.
- 6 Recommendation 18 of the report advised the government to review all legislation related to the counter-terrorism effort to ensure it is current and enables public sector agencies to operate effectively, prioritising consideration of the creation of precursor terrorism offences in the TSA.
- 7 The Bill updates our counter-terrorism legislation to provide agencies with the ability to respond to a range of terrorism activities by providing clarity, introducing new offences, and extending the availability of control orders. The Bill is the first step in responding to recommendation 18.
- 8 The Bill also brings New Zealand into line with our international obligations (including the resolutions of the United Nations Security Council) and international best practice.

- 9 The amendments in the Bill balance enhancing our ability to prevent, disrupt and respond to terrorism to protect public safety with the individual rights and freedoms recognised in the New Zealand Bill of Rights Act 1990.

Key legislative amendments

“Terrorist act” definition

- 10 The Bill contains minor amendments to the definition of “terrorist act” in the TSA to modernise, provide clarity, ensure the threshold is set at the right level, and improve the application of the definition.
- 11 There are four elements to the definition – motive, intent, outcome and the avoidance of doubt provision. The Bill amends the first three of these elements in the following ways:
- 11.1 **Motive** – the ‘terrorist act’ act must be carried out for the purpose of advancing an ideological, political or religious cause. The Bill contains an amendment to make it clear that mixed motives are covered by the definition.
- 11.2 **Intent** – currently, a ‘terrorist act’ must be done with the intent to induce *terror* in a *civilian population* or to *unduly compel* or to force a government or international organisation to do or abstain from any act. The Bill makes the following amendments:
- 11.2.1 ‘terror’ is changed to ‘intimidate’;
- 11.2.2 ‘civilian’ is removed; and
- 11.2.3 ‘unduly compel’ is changed to ‘coerce.’
- 11.3 **Outcome** – a ‘terrorist act’ must be intended to cause at least one of certain specified outcomes in the TSA. All of these outcomes are related to death, serious injury, or serious risk to safety of people, with the exception of the introduction or release of a disease-bearing organism if likely to devastate the national economy of a country.
- 11.4 Serious property or economic damage is included in the definition, but only if there is actual harm or likely danger to people. The Bill amends two of the outcomes, as set out below:
- 11.4.1 ‘serious interference with, or serious disruption to, an *infrastructure facility*, if likely to endanger human life’ is amended to reflect that modern infrastructure includes much more than facilities; and
- 11.4.2 ‘introduction or release of a disease-bearing organism, if likely to *devastate* the national economy of a country’ is amended by changing ‘devastate’ to ‘cause major damage to.’

A new planning and preparation offence

- 12 The Bill introduces a new offence for planning or preparation for a terrorist act. This activity is not currently criminalised, reducing agencies' ability to intervene early enough to disrupt terrorism-related activity and prevent a terrorist attack from occurring.
- 13 The Select Committee agreed to amendments to simplify the planning or preparation offence. This was by removing the element of the offence that provided that, although criminal liability arose for planning a terrorist act, it did not arise for planning to plan a terrorist act. Submitters found this concept confusing. The simplification of the offence does not reflect a change in policy. This is because the offence continues to specifically exclude criminal liability for attempt, conspiracy, incitement and credible threat to commit the planning or preparation offence.
- 14 The Bill sets a maximum penalty of 7 years' imprisonment for this offence. This is set lower than most of the other offences in the TSA and reflects that this offence is more remote than an attempt (carrying 10 years' imprisonment) and the offence is a preventative mechanism to enable early intervention.
- 15 The Bill provides that certain provisions in the Search and Surveillance Act 2012 (sections 15-17 and 48), which enable warrantless powers to be exercised, will be available for the planning or preparation offence. Because of the fluid, unpredictable nature by which preparations may move to more advanced conduct, warrantless powers are needed to intervene quickly and prevent the activity from escalating. Warrantless powers are limited by the requirement that Police must assess the circumstances and obtain a warrant if they determine that there is enough time to do so.

A new terrorism training offence

- 16 The Bill introduces a new offence of providing or receiving weapons or combat training to:
 - 16.1 carry out a terrorist act; or
 - 16.2 enhance the ability of an individual or group to carry out a terrorist act.
- 17 Weapons and combat training make a person inherently dangerous, and this offence will clearly condemn and denounce this behaviour when it is done with the intention that it be used for a future terrorist act.
- 18 The Bill sets a maximum penalty of 7 years' imprisonment for this offence.

A new terrorism travel offence

- 19 The Bill creates a new offence for travelling to, from or via, New Zealand with the intention to carry out one of the terrorist offences in the TSA. The Bill specifies which offences the travel offence applies to, and sets the maximum penalty for travel at half of the maximum penalty for the corresponding offence. The penalties range from 3.5 years' imprisonment to 10 years' imprisonment (where the corresponding offence has a penalty of life imprisonment).
- 20 This offence would enable enforcement agencies to intervene where the person is travelling, before the intended offence is committed. It will enable us to help prevent terrorism both domestically and internationally.
- 21 The Select Committee made a recommendation to clarify that terrorist activities in New Zealand's territorial waters are captured by the new offence.

A new terrorism finance framework

- 22 The Bill expands the existing terrorism financing offences to prevent a broader range of support being provided for terrorism. The existing offences target the provision of financial support or services to a terrorist person or group.
- 23 The Bill criminalises the provision of material support for terrorist purposes, including, for example, buying/stockpiling/storing resources, and non-financial advice and services. This expanded scope reflects international best-practice and the evolving nature of the domestic terrorism financing threat, which now relates primarily to small groups and lone actors.
- 24 In addition, the Bill will criminalise material support provided recklessly – where the person perceived that there was a risk that the support would be used for terrorist acts or by terrorist entities in the circumstances but proceeded regardless.
- 25 The Select Committee made a change to move the statutory exclusion for support provided in good faith for genuine humanitarian reasons from the definition of material support to the offence itself. The Select Committee also changed “essential human needs” to “basic needs”, which is more consistent with international law and provides further clarity.
- 26 The Bill sets penalties for the financing and material support offences that reflect the *mens rea* standard. Where support is provided with intent, the penalty is a maximum of 14 years' imprisonment. Where the support is provided with knowledge or recklessness, the penalty is a maximum of 10 years' imprisonment.

Extended control orders regime

- 27 The Bill extends the existing control orders regime to include individuals in New Zealand who have completed a prison sentence for a terrorism-related offence if they continue to present a real risk of engaging in terrorism-related activities. Control orders are court-imposed civil orders that place requirements on individuals for example, prohibitions on associating with certain people, having specified financial accounts, residential restrictions and electronic monitoring. Control orders aim to increase public safety, prevent the individual engaging in terrorism-related activities and support their reintegration into New Zealand.
- 28 Currently, the control orders regime only provides for orders to be made in respect of people who are returning to New Zealand after having engaged in terrorism-related activities overseas. However, it is appropriate to widen the scope domestically because:
- 28.1 they are appropriate given the nature and scale of the risk posed to the public by terrorism-related offending. Even a single offending incident can result in serious harm to large numbers of people and potentially undermine national security; and
 - 28.2 control orders fill a gap that is not satisfied through the criminal jurisdiction. Control orders allow for a more nuanced proactive management of risk compared to surveillance powers and enable a framework to be put around rehabilitation and reintegration support.
- 29 The Bill sets out the terrorism related offences for which an individual must be convicted for the control orders regime to be available. This includes all of the offences in the TSA and specific domestic offences under the Films, Video, Publications Classifications Act 1993, where the offence relates to a publication deemed objectionable due to promoting or encouraging terrorism. For example, sharing an objectionable publication of that kind.
- 30 The extended control orders regime would operate in a similar way to the existing control orders. This has been carefully designed to go up to (but remain within) the line of what is justifiable in a free and democratic society in the name of public safety. Namely:
- 30.1 eligibility for a control order would be not automatic. It will continue to require Police prove that the person poses a real risk of engaging in terrorism-related activity;
 - 30.2 the Court is only able to set terms of control orders that are necessary and appropriate for reducing terrorism risk (or another purpose of the Act), and which amount to proportionate limits on the person's rights and wider interests; and
 - 30.3 control orders will only be imposed for as long as necessary to manage the terrorism risk, up to a maximum of two years per order. A control order can be renewed up to two times, for a maximum duration of six years.

- 31 The penalty for breaching control order requirements is the same as for the existing regime – imprisonment for a term not exceeding one year or a fine not exceeding \$2000. This penalty level reflects the fact that a breach can involve conduct that, but for the order, is not otherwise criminal in nature. For example, spending the night at another person’s house. Where the breach relates to conduct that is fundamentally criminal in nature, the underlying offence can be pursued.

The Bill improves the workability of the TSA

- 32 The Bill provided the opportunity to tidy up aspects of the TSA to improve comprehensibility and the general workability of the legislation. None of these amendments make substantive changes to the existing law but all will aid clarity and improve coherence and consistency within the TSA. These amendments include:

- 32.1 moving section 25 (which gives meaning to “carrying out” a terrorist act) to the interpretation section of the TSA. This change will clarify that the meaning is of general application to the TSA as a whole, rather than only the designations process in the TSA;
- 32.2 adopting consistent and up-to-date terminology throughout the TSA;
- 32.3 including ISIL (Da’esh) (a splinter group of Al-Qaida known as the Islamic State in Iraq and the Levant) as a named designated entity in the same way it refers to Al Qaida and the Taliban. This is to explicitly give effect to mandatory UN Security Council resolutions requiring New Zealand to impose sanctions on these entities;
- 32.4 ensuring extraterritorial jurisdiction is available for the full range of terrorist offences under the TSA.

Safeguards built into the new offences

- 33 The new offences in the Bill have safeguards built into them to ensure that they do not criminalise legitimate behaviour, and that freedoms are not limited unreasonably. The link to a terrorist act ensures that these offences will only apply where the relevant motivations and intents for a terrorist act are present. In addition, the Attorney-General will need to consent to prosecute these offences, as with all substantive offences in the TSA.