

Crimes and Misconduct (Overseas Operations) Bill

Government Bill

Explanatory note

General policy statement

Under current New Zealand law, criminal jurisdiction can only be exercised for offences committed overseas as part of deployments where those offences are committed by New Zealand Defence Force personnel or by police personnel serving in a United Nations force. This legislation has been prepared to allow New Zealand to exercise criminal jurisdiction over New Zealand police personnel and civilians serving overseas as part of non-United Nations deployments. There is a need for New Zealand to possess such jurisdiction in order to cover non-armed service personnel participating in the deployment in the Solomon Islands to help restore law and order and functioning government institutions there, so that jurisdiction can be exercised over them in the same way that it can over New Zealand Defence Force personnel also serving in the Solomon Islands. But the creation of this jurisdiction (and a related disciplinary jurisdiction in respect of members of the police) will also cover any deployments for similar purposes that might at some time in the future be necessary.

Clause by clause analysis

Clause 1 relates to the Title of the Bill.

Part 1

Preliminary provisions

Clause 2 is the commencement clause. The Bill is deemed to have come into force on 24 July 2003 (which is the date on which a New

Zealand contingent departed for the Solomon Islands to participate, with personnel from other countries in the Pacific, in an operation designed to restore law and order, and functioning government institutions in those Islands).

Clause 3 sets out the purpose of the Bill, which is to—

- ensure that members of the police and other civilian personnel engaged overseas in operations involving peacekeeping, the maintenance or restoration of law and order or functioning government institutions, or similar activities, are subject to the jurisdiction of New Zealand Courts for offences against New Zealand law committed overseas, unless there is good reason why they should not be subject to that jurisdiction:
- ensure that members of the police engaged in such operations are subject to the disciplinary processes that apply to members of the police in New Zealand.

The Bill is not confined in its application to the present situation in the Solomon Islands but will apply to any similar use of New Zealand personnel in overseas operations that do not come under the auspices of the United Nations. The position of members of the police who participate in forces coming under the auspices of the United Nations is not dealt with in this Bill, because there is already separate legislation governing the position of those members. The position of members of the New Zealand Armed Forces who participate in overseas operations is also covered in other legislation.

Clause 4 defines key terms.

Part 2

Jurisdiction over police and civilian members of overseas operations force

Clause 5 makes it an offence under New Zealand law for any member of the police or other civilian member of an overseas operations force to do or omit to do anything outside New Zealand that would be an offence in New Zealand if done or omitted in New Zealand. There is an exception if the authorities in the place where the act or omission occurs are entitled to exercise the criminal jurisdiction of that place in respect of that act or omission, do not cede that jurisdiction to New Zealand, and do in fact bring criminal proceedings against the person in that place.

Clause 6 provides powers to arrest, detain, or bail any person to whom *clause 5* applies.

Clause 7 applies the disciplinary processes applicable under the Police Act 1958 and regulations made under that Act to members of the police who are part of an overseas operations force.

Clause 8 is a savings provision.

Hon Phil Goff

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Crimes and Misconduct (Overseas Operations) Act **2003**.
- Part 1**
Preliminary provisions 5
- 2 Commencement**
This Act is deemed to have come into force on 24 July **2003**.
- 3 Purpose**
The purpose of this Act is to—
- (a) ensure that members of the police and other persons serving in overseas operations involving peacekeeping, the maintenance or restoration of law and order or functioning government institutions, or similar activities, are subject to the jurisdiction of New Zealand Courts 10

for offences against New Zealand law committed overseas, unless there is good reason why they should not be subject to that jurisdiction:

- (b) ensure that members of the police engaged in such operations are subject to the disciplinary processes that apply to members of the police in New Zealand. 5

4 Interpretation

In this Act, unless the context otherwise requires,—

member of the police includes a non-sworn member of the police 10

Minister means the Minister of Police

overseas operations force—

- (a) means any group of persons that, before, on, or after the commencement of this Act, is authorised or required by the Government of New Zealand to participate in duties overseas involving peacekeeping, the maintenance or restoration of law and order or functioning government institutions, or similar activities (whether or not in conjunction with personnel from 1 or more other countries); but 15
- (b) does not include any member of the police who is part of a United Nations force and to whom the United Nations (Police) Act 1964 applies. 20

Part 2

Jurisdiction over police and civilian members of overseas operations force 25

5 Jurisdiction over police and civilian members of overseas operations force

- (1) This section applies to any member of the police or any other person who is not a member of the armed forces while that member of the police or that other person— 30
 - (a) is a member of an overseas operations force; and
 - (b) is outside New Zealand.
- (2) If any person to whom this section applies does, or omits to do, any act outside New Zealand (whether or not the act or omission concerned constitutes an offence under the laws in force in the place where it took place) that if done or omitted 35

within New Zealand would constitute an offence, that act or omission is deemed to have taken place within New Zealand unless—

- (a) the person is subject to the criminal jurisdiction of the place in which the act or omission took place; and 5
- (b) the authorities in that place—
 - (i) are not subject to any obligation to cede jurisdiction to the New Zealand authorities in respect of that act or omission; and
 - (ii) bring criminal proceedings against the person in that place. 10
- (3) No information may be laid against any person over whom jurisdiction is claimed by virtue of **subsection (2)** without the consent of the Attorney-General. 15

Compare: 1961 No 43, s 8A(2), (3); 1964 No 1 ss 3, 4

6 Powers of arrest and detention

- (1) **Subsection (2)** applies to any offence in respect of which laying of an information requires the consent of the Attorney-General under by **section 5(3)**.
- (2) If any person is alleged to have committed an offence to which this subsection applies,— 20
 - (a) the person may be arrested; or
 - (b) a warrant for the person's arrest may be issued and executed,— 25and the person may be detained in custody or, as the case requires, remanded in custody or on bail, even though the consent of the Attorney-General has not been obtained to the laying of an information in respect of that offence; but no further proceedings may be taken until that consent has been obtained. 30
- (3) The provisions of the Crimes Act 1961 relating to arrest apply in respect of the arrest of any person referred to in **subsection (2)** for any act or omission to which **section 5** applies, in all respects as if the act or omission had occurred in New Zealand. 35

Compare: 1961 No 43 s 8A(4), (5); 1964 No 1 s 5(1)

- 7 Misconduct or neglect of duty**
If any member of the police does or omits to do any act, and that act or omission would, if it occurred in New Zealand, be misconduct or neglect of duty for the purposes of the Police Act 1958 or any regulations made under that Act,— 5
- (a) the member may be investigated and, if appropriate, proceeded against under that Act or those regulations by way of disciplinary action and punished, in the same manner in all respects as if the act or omission had occurred in New Zealand; and 10
- (b) for that purpose, the Police Act 1958 and any regulations made under that Act apply with any necessary modifications. 10
- Compare: 1964 No 1 s 6 15
- 8 Saving of jurisdiction**
Nothing in this Act limits or affects the provision of any enactment or rule of law relating to the liability of persons in respect of acts done or omitted beyond New Zealand. 20
- Compare: 1964 No 1 s 7 20