

International Treaties Bill

Member's Bill

Explanatory note

Parliament has now introduced procedures for the examination of international treaties by the House and select committees prior to action by the Government in ratifying, accepting, approving or acceding to such treaties. The procedures only partly address the challenges, including in terms of consultation and democratic involvement, that the process of globalisation (which is most strongly represented by treaties at the legal level) presents to a small exposed state in New Zealand's position. Parliament will now have the opportunity to have a say before New Zealand becomes party to international treaties. But the procedures do not apply to all international treaties, in particular to bilateral treaties except on a case by case basis at the Minister's discretion; the Government only agreed to the procedures in 1998 under certain other restrictions, including restrictions on the time available to Parliament to examine the treaties; and New Zealanders will not, in any event, be able to have confidence that international treaties will not have damaging consequences for them unless and until treaties are subject to procedures prescribed by law.

This Bill will fill that gap. It will ensure that all international treaties of interest to New Zealand come before Parliament in a timely manner, and that Parliament gives its approval before New Zealand becomes party to them. That in turn will ensure that, in future, the only treaties that are given effect to by the courts in New Zealand law are those that have been before Parliament. The courts have been having increasing recourse to international treaties, whether they have been incorporated into New Zealand law or not. That trend seems bound to continue. It is appropriate to respond to that development, and ensure that Parliament is not cut out of the picture,

by bringing all treaties, whether or not they are of a law-making character, under parliamentary control.

It is recognised that, if nothing further were done, one effect of this change is that the position occupied by international treaties in New Zealand law would increase further. They would be likely to be invoked to a greater extent in the courts, and the Government may assert a greater domestic effect and application of treaties than in the past both with respect to its own actions and in relation to the activities of New Zealanders. The Bill anticipates such developments by providing that parliamentary approval of treaties does not, by itself, make the treaties, or any of their provisions, part of New Zealand law. Rather, legislation will continue to be required for that purpose.

Clause 3 sets out the purpose of the Bill.

Clause 4 sets out the definitions. At international law, “treaty” is given a standard meaning by article 2(1)(a) of the Vienna Convention on the Law of Treaties. The definition in the bill is based closely on that meaning, but also draws from article 3 of the Convention and specifically includes any amendment to a treaty within the definition.

Clause 5 provides that the Act binds the Crown.

Clause 6 requires the Crown to present to the House of Representatives all treaties to which it is proposed that New Zealand become party. Every such treaty must be accompanied by a national interest analysis, which is the document provided for in the new procedures introduced in 1998 and now written into the Standing Orders of the House. Further obligations are placed on the Crown to present, as soon as possible after adoption, treaties that are open to New Zealand to become party to and are certified by the Minister of Foreign Affairs and Trade as of interest to New Zealand, and to present such other information, including from time to time the text of draft treaties that are under negotiation in which New Zealand is involved, as will keep the House informed of significant developments in treaty making. This latter obligation reflects the fact that, in the contemporary world, it is no longer sufficient for the House to know about international treaties after the event. It must also be informed of significant treaties that are under development, and be given the opportunity to express its view and provide appropriate directions as required on those developments. *Clause 6(2)* extends the Crown’s obligations under this provision to treaties

from which New Zealand is proposing to withdraw or in respect of the provisions of which it is proposing to lodge a reservation.

Clause 7 requires the Crown to obtain the approval of the House of Representatives before New Zealand becomes party to a treaty or takes any other action to which *clause 6* applies that is binding at international law in relation to a treaty. No treaty, or treaty provision, will have the force of law by virtue of such approval. It is not intended that there be any change to the present position whereby prior implementing legislation must be passed in those cases where treaty provisions necessitate some change to New Zealand domestic law before New Zealand can give effect to the obligations that they contain. It will therefore continue to be the case, as the Bill provides, that a treaty or treaty provision will have the force of law in New Zealand only if it has been directly incorporated into New Zealand law by or under an Act of Parliament. However, Parliament may, on occasion (such as when the provisions concerned are of a minor or technical nature), wish to expedite the passage of implementing legislation required to give effect to treaties that the House has examined, and the House may wish to give further consideration to procedures to that end.

Clause 8 sets out the requirements for the national interest analysis that the Crown will be required to present to the House of Representatives in connection with proposed treaty actions. These requirements are based closely on those applying under the new procedures for the examination of international treaties by the House and select committees, and presently contained in S.O. 385 of the Standing Orders of the House (as amended in 1999), but a reference to consistency with the Treaty of Waitangi has been added in *clause 8(1)(d)*.

Keith Locke

International Treaties Bill

Member's Bill

Contents

1	Title	6	Crown to refer treaties to Parliament
2	Commencement	7	Approval of treaties by Parliament
3	Purpose	8	National interest analysis
4	Interpretation		
5	Act to bind the Crown		

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the International Treaties Act **2000**.

2 Commencement

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

3 Purpose

The purpose of this Act is to ensure proper parliamentary approval and oversight of international treaties.

4 Interpretation

In this Act, unless the context otherwise requires,—

Minister means the Minister of Foreign Affairs and Trade

national interest analysis means the document referred to in section 8

treaty means an international agreement between subjects of international law, whether states or international organisations, in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation; and includes any amendment to a treaty. 15 20

5 Act to bind the Crown

This Act binds the Crown.

6 Crown to refer treaties to Parliament

- (1) The Crown must present to the House of Representatives the following documents:
- (a) the text of any treaty in respect of which the Crown is proposing that New Zealand take an action binding at international law;
 - (b) a national interest analysis, accompanying every such treaty, which meets the requirements specified in **section 8**;
 - (c) as soon as possible after adoption, the text of any new treaty that is open to New Zealand to become party and is certified by the Minister to be of interest to New Zealand;
 - (d) information, including from time to time the text of draft treaties that are under negotiation involving New Zealand, sufficient to keep the House informed of significant developments in treaty making.
- (2) **Subsection (1)(a)** applies to all binding actions at international law by New Zealand in respect of treaties, and includes the following actions:
- (a) withdrawal from or denunciation of any treaty;
 - (b) lodging of any reservation in relation to a treaty or any provision of a treaty.

7 Approval of treaties by Parliament

- (1) Subject to any procedures laid down by the House of Representatives with respect to treaty actions taken by the Crown urgently, or in relation to treaties in such categories as the House of Representatives may specify, the Crown must not take a binding action at international law to which **section 6(1)(a)** applies without the approval of the House of Representatives.
- (2) No treaty, or provision in any treaty, has the force of law in New Zealand by virtue of an approval given under **subsection (1)**.
- (3) A treaty in respect of which an action is approved under **subsection (1)**, or any provision in such treaty, has the force of

law in New Zealand if, and only if, the treaty or the provision is incorporated into New Zealand law by any enactment.

8 National interest analysis

- (1) The Crown must accompany every treaty to which **section 6(1)(a)** applies with a national interest analysis that addresses the following matters: 5
- (a) the reasons for New Zealand taking the treaty action:
 - (b) the advantages and disadvantages to New Zealand of the treaty entering into force for New Zealand:
 - (c) the obligations which would be imposed on New Zealand by the treaty, and the position in respect of reservations to the treaty: 10
 - (d) the economic, social, cultural, and environmental effects of the treaty entering into force for New Zealand, and of the treaty not entering into force for New Zealand, together with its consistency with the Treaty of Waitangi: 15
 - (e) the costs to New Zealand of compliance with the treaty:
 - (f) the possibility of any subsequent protocols (or other amendments) to the treaty, and of their likely effects: 20
 - (g) the measures which could or should be adopted to implement the treaty, and the intentions of the Government in relation to such measures, including legislation:
 - (h) a statement setting out the consultations which have been undertaken or are proposed with the community and interested parties in respect of the treaty: 25
 - (i) whether the treaty provides for withdrawal or denunciation.
- (2) In the case of a treaty in respect of which the Crown is proposing to take a binding action of the kind referred to in **section 6(2)(a) or (b)**, the national interest analysis must address the matters set out in **subsection (1)** to the full extent applicable to that proposed action. 30