

BILLS DIGEST

TERRORISM SUPPRESSION AMENDMENT BILL 2007

Date of Introduction: 21 March 2007

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TERRORISM SUPPRESSION AMENDMENT BILL 2007

Date of introduction:	21 March 2007
Portfolio:	Foreign Affairs
Select Committee:	As at 29 March, 1st reading not held

PURPOSE

The aim of the Bill is to amend the Terrorism Suppression Act 2002 (the Act) to conform with New Zealand's obligations under the Charter of the United Nations and the United Nations Security Council (the Security Council) resolutions on terrorism, and to make certain provisions workable¹.

BACKGROUND**Designation of UN listed terrorist entities**

"Currently New Zealand is required to designate United Nations (UN) listed terrorist entities under the Act before they become subject to the provisions of the Act. The Bill amends the Act by removing this designation process and applying the provisions of the Act automatically to terrorist entities that are subject to the United Nations (Sanctions) Regulations 2001. These regulations recognise terrorist designations once they are listed by the United Nations Security Council. These designations will remain in place until the entities are removed from the United Nations' terrorist list. This change will better reflect the mandatory nature of New Zealand's legal obligations under the Security Council's Al Qaeda and Taliban sanctions regime and removes the risk of inconsistency between New Zealand's international obligations under the relevant UN Security Council resolutions and New Zealand's domestic legal regime. The Act will continue to have a designation mechanism that can be used to designate terrorist entities not on the United Nations terrorist list"².

High Court extension of designations (for non-UN terrorist list entities)

"Currently, final designations expire after 3 years unless extended by the High Court. It is inappropriate for this process to apply to UN designations because New Zealand is obliged to maintain them until they are lifted by the Security Council. This Bill proposes that the 3-year review by the High Court be replaced by a 3-yearly review by the Prime Minister, and that it only apply to non-UN designations (that is, to designations made by the Prime Minister, and not by the UN). The Prime Minister would apply the same test as for the original designation"³.

Freezing of assets and forfeiture regime

"The existing provisions of the Act that provide for the freezing of terrorists' assets do not adequately implement New Zealand's international legal obligations under the

¹ Terrorism Suppression Amendment Bill, 2007 No 105-1, Explanatory note, p 1.

² Ibid., p. 1.

³ Ibid., p. 2.

Security Council's terrorism sanctions regime"⁴. This Bill requires automatic freezing of assets on interim or final designation

Terrorist financing offences---avoidance of doubt provisions

"The avoidance of doubt provisions were included in the Act to provide clarity on the scope of offences in the Act. They have, however, instead created uncertainty and should be repealed. This will remove ambiguity and ensure we comply with international obligations"⁵.

General offence of committing a terrorist act

"The Bill inserts a new offence of committing a "terrorist act" into the Act. Currently, ordinary criminal offences are relied on"⁶.

Participating in a terrorist group

"At present the mental element for this offence is knowledge. The Bill amends the offence provision to include recklessness so that it is in line with the offence of harbouring or concealing terrorists"⁷.

New offences involving nuclear material

"New Zealand has signed the International Convention for the Suppression of Acts of Nuclear Terrorism (the Nuclear Terrorism Convention). The International Atomic Energy Agency to the Convention on the Physical Protection of Nuclear Material (the Nuclear Material Convention) has also recently adopted amendments. In order for New Zealand to ratify both instruments, this Bill creates new offences concerning the use of radioactive material and radioactive devices, and amends the existing offences involving the physical protection of nuclear material. Once these amendments are made New Zealand will be able to ratify the 2 international instruments"⁸.

MAIN PROVISIONS

Amending the Terrorism Suppression Act 2002

New purposes

The Bill adds two new purposes: the implementation of the "Nuclear Terrorism Convention"⁹ and the further implementation of the "Afghanistan Sanctions Resolutions"¹⁰ (*Part 1, Clause 5, amending Section 4 of the Act*).

⁴ Ibid., p. 2.

⁵ Ibid., p. 2.

⁶ Ibid., p. 2.

⁷ Ibid., p. 2.

⁸ Ibid., pp. 2 and 3.

⁹ The Bill defines the term "Nuclear Terrorism Convention" as meaning " ... the Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations in New York on 13 April 2005, a copy of the English text of which is set out in Schedule 2C" (*Part 1, Clause 5(1), amending Section 4 of the Act by inserting a definition of "Nuclear Terrorism Convention"*).

¹⁰ The Bill defines the term "Afghanistan Sanctions Resolutions" as meaning " ... means Resolution 1267 (1999) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 15 October 1999 and its successor resolutions, including Resolution 1333 (2000) of 19 December 2000 and Resolution 1390 (2002) of 16 January 2002" (*Part 1, Clause 5(1), amending Section 4 of the Act by inserting a definition of "Afghanistan Sanctions Resolutions"*).

Committing a terrorist act

The Bill creates a new offence of committing a terrorist act. A person who commits a terrorist act is liable on conviction on indictment to imprisonment for life or a lesser term (*Part 1, Clause 6, inserting New Section 6A into the Act*).

Comment

"This is required as, although the principal Act contains a range of specific terrorism related offences, there is no general offence criminalising the commission of a terrorist act"¹¹.

Funds advocating democratic government or human rights protection

Section 8(2) of the Act provides that an offence of financing terrorism is not committed if it is intended that the funds are to be used for the purpose of advocating democratic government or the protection of human rights. This provision is deleted from the Act (*Part 1, Clause 7, repealing Section 8(2) of the Act*).

Comment

"This provision is being removed as it leaves scope for a donor to argue that funds provided to a designated terrorist entity were provided for legitimate reasons associated with democracy or human rights"¹².

Offence of dealing with terrorist property

Section 9(1) of the Act makes it an offence for a person to, without lawful justification or reasonable excuse, deal with any property knowing that the property is property owned or controlled, directly or indirectly, by an entity for the time being designated under the Act as a "terrorist entity" or as an "associated entity".

The Bill replaces the terms "terrorist entity" and "associated entity" with the term "designated terrorist entities". The term "designated terrorist entity" means an entity for the time being designated under Section 20 or Section 22 of the Act as a terrorist entity or associated entity or that is a United Nations listed terrorist entity. This change in nomenclature is carried over into other sections of the Act amended by this Bill (*Part 1, Clause 8, amending Section 9 of the Act*).

Offence of harbouring or concealing terrorists

Section 13(1) of the Act provides that a person commits an offence who participates in a group or organisation for the purpose of enhancing the ability of any relevant entity to carry out, or to participate in the carrying out of, one or more terrorist acts, knowing that the group or organisation is an entity that is for the time being designated under the Act as a terrorist entity or an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

The Bill includes the element of recklessness (i.e. knowing "or being reckless as to whether" (*Part 1, Clause 12, amending Section 13(1) of the Act*).

¹¹ Terrorism Suppression Amendment Bill, 2007 No 105-1, Clause by clause, p. 3.

¹² *Ibid.*, p. 3.

Expiration

The Act at present provides that a designation as a terrorist entity expires after three years unless extended by order of the High Court.

The Bill provides for a new review procedure. A designation would expire after three years unless it is earlier revoked or renewed by an order made by the Prime Minister for another three years if he or she is satisfied that there are still reasonable grounds under Section 22 for the designation. Further renewal orders may also be made (*Part 1, Clause 21, substituting New Section 35 for Sections 35 to 37*).

Amendments to Terrorism Suppression Amendment Act 2005

Consequential amendments are made to this Act