

BILLS DIGEST

TERRORISM SUPPRESSION AMENDMENT BILL 2007 (2007 No 105-2)

**As reported from the Foreign Affairs, Defence and Trade Committee:
27 September 2007**

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TERRORISM SUPPRESSION AMENDMENT BILL 2007 (2007 No 105-2)

Date of introduction:	21 March 2007
Portfolio:	Foreign Affairs
Select Committee:	Foreign Affairs, Defence and Trade
Date report presented:	27 September 2007

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.

MAIN CHANGES TO THE BILL**Extension of national designations**

Section 22 of the Act allows the Prime Minister to designate an entity as a terrorist entity if he or she believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts.

The Bill provides that such a designation expires three years after the date on which it took effect unless it is revoked or renewed.

The Select Committee has recommended that, after making an order to renew a designation, the Prime Minister must report to the Intelligence and Security Committee on the proposed renewal (*Part 1, Clause 21, inserting New Section 35 into the Act, new subsection (3A)*).

Comment

The Select Committee considered that such decisions to renew designations, like initial designations, involve judgements about national security that were more properly made by the Executive than the High Court. However, the Select Committee recommended this amendment to "ensure transparency"².

Freezing of assets and forfeiture regime

The Select Committee has recommended the deletion of the provision forbidding any dealing with the property of a designated terrorist entity (*Part 1, Clause 10, deletion of proposed New Section 10A*).

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

² Terrorism Suppression Amendment Bill, 2007 No 105-2, As reported from the Foreign Affairs, Defence and Trade Committee, Commentary, p 3.

Comment

The reasons for this recommendation are that the provision creates a prohibition against dealing with property but provides no sanction for the breach of it and " ... Section 9 of the Act prohibits dealing with property owned or controlled by a designated entity. 'Deal with' is defined broadly and includes using the property in any way, and also allowing the property to be used or dealt with by anyone. Therefore, the effect of the current offence provisions is in fact to 'freeze' the assets anyway, as they prohibit dealing with the property and allowing others to deal with it. This approach is consistent with that taken in Australia, which uses the Australian Charter of the United Nations Act 1945 and associated regulations to freeze the assets as required". Given these considerations, the Select Committee believed the proposed amendment to the Act contained in clause 10 was not necessary and should be removed from the Bill³.

New offences involving nuclear material

The Select Committee has recommended that additional words from the Convention on the Physical Protection of Nuclear Material be incorporated into the Bill, to restrict the new offence provided for in clause 13(3) (committing an act against a nuclear facility) to interference with "the operation of" a nuclear facility and to acts where the intention is to cause death or serious injury or substantial damage to property or the environment "by exposure to radiation or release of radioactive substances" (*Part 1, Clause 13(3) amending Section 13C(1)(g) of the Act.*

³ Ibid, pp. 3 and 4.