

# **Asia-Pacific Economic Cooperation (APEC 2021) Bill**

Government Bill

As reported from the Foreign Affairs, Defence and Trade Committee

## **Commentary**

### **Recommendation**

The Foreign Affairs, Defence and Trade Committee has examined the Asia-Pacific Economic Cooperation (APEC 2021) Bill and recommends that it be passed with the amendments shown.

### **About the bill as introduced**

The New Zealand Government will host the Asia-Pacific Economic Cooperation forum (APEC 2021) between December 2020 and November 2021. About 30 events involving senior officials, Ministers, and others will be held during the year.

The APEC 2021 Leaders' Week will be hosted in Auckland from 8 to 14 November 2021, with about 10,000 people expected to attend. It will involve 21 world leaders, Ministers, officials, business people, youth representatives, and media.

As a primary purpose, the APEC 2021 bill seeks to ensure the security of all involved in APEC, as well as the media and members of the public. As a secondary purpose, the bill seeks to facilitate the timely and efficient operation of APEC 2021.

All of the provisions in the bill would expire on 21 November 2021.

### **Main provisions in the bill as introduced**

#### **Commissioner of Police to authorise certain functions**

Part 2 of the bill would enable the Commissioner of Police to authorise:

- members of the Armed Forces to perform the functions, and have the powers, of a constable during the leaders' event period<sup>1</sup>
- certain appropriately trained people to be designated as APEC security staff to help the Police during the leaders' event period

- foreign protection officers to carry, possess, and import specified weapons.

Foreign protection officers would not have immunity for their actions.

### **Securing places and transport routes**

Subpart 1 of Part 3 of the bill provides for places and transport routes to be secured during the leaders' event period. The purpose of this is to prevent or respond to risks to security. For transport routes, a secondary purpose is to enable protected persons to travel efficiently and on time.

### **Securing airspace**

Subpart 2 of Part 3 provides that airspace can be secured during APEC events and leaders' events to prevent potential and actual risks to security. Clause 80 specifies that certain areas could be designated as APEC security airspace. The areas can be where a leaders' or APEC event will be held, a security area, or an area in a secure transport route.

### **Securing radio spectrum**

Subpart 3 of Part 3 would allow the Commissioner of Police to authorise the use of wireless electronic countermeasures (W-ECMs) during an APEC event or a leaders' event to counter potential and actual risks to security. The bill would define W-ECMs as any equipment or device that does any, or all, of the following: detect, intercept, disable, disrupt, or interfere with radiocommunications.

We discuss the requirements of this subpart in more detail in our section on authorising the use of W-ECMs.

### **Proposed amendments**

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

### **Extending the definition of APEC security staff**

Clause 18 sets out the types of people the Commissioner may authorise as APEC security staff. The private individuals who could be authorised are limited to a crowd controller or crowd controller employee as defined in the Private Security Personnel and Private Investigators Act 2010.<sup>2</sup> We understand that they would be trained and used for screening and controlling people accessing venues.

We consider that a property guard may also be able to undertake roles in the APEC security operation. A property guard generally guards property or monitors cameras

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<sup>1</sup> The leaders' event period is from 8 to 14 November 2021 and the weeks immediately before and after.

<sup>2</sup> The other people are employees of a New Zealand government agency or a member of the Australian Police.

and alarms belonging to another person. They also respond to incidents related to the property they are guarding or monitoring.

Therefore, we recommend amending clause 18(2) to include a property guard or property guard employee. These positions would have the same meaning as in sections 9 and 17 of the Private Security Personnel and Private Investigators Act. We are comfortable with this amendment because the Commissioner would have the discretion to make such appointments and could impose any conditions on the authorisation.

### **APEC security staff to present identification**

Clause 23(2) of the bill provides that clause 105 would apply when APEC security staff exercise a power under this legislation. Before exercising the power, they would need to produce their identification card for inspection, if reasonably practicable. APEC security staff would also need to clearly display the card when exercising the power.

For consistency with clause 105, we recommend amending clause 23(2) to require a person to clearly display, or produce, their identification card when exercising a power.

### **Matters for the Commissioner to consider when granting an authority or permit**

The bill would allow a foreign protection officer, or someone on their behalf, to apply to the Commissioner for an authority to carry and possess a specified weapon and a permit to import it. The weapon would need to be for protecting a protected person during the leaders' event period.

Clause 36(2) would require the Commissioner to consider the level of protection a protected person requires before granting any authority or permit and deciding any applicable conditions. We recommend amending clause 36(2) to make it clear that the Commissioner could consider other relevant matters before granting an authority or a permit.

### **Reactive closure of any place**

Clause 51 would enable a constable to close any place during the leaders' event period. They would need to believe that the closure was necessary to prevent or respond to a risk to security at or near a leaders' event or near a protected person. The constable would not need to consult before deciding to close a place. This provision would apply to situations where prompt action is needed and public notification may not be possible.

We recommend that the ability to create a reactive security area should be limited to constables with the rank of Senior Sergeant or higher. We believe a person with this rank would have more training and experience, particularly in situations that require immediate responses. Accordingly, we recommend amending clause 51 to this effect.

### **Authorising the use of wireless electronic countermeasures**

Part 3 of the bill would enable the Police and foreign security agencies to import, use, and export W-ECMs during APEC events and leaders' events to counter potential and actual risks to security. We note that this technology has privacy implications, which we discuss later in this section. Therefore, the bill would impose certain explicit conditions on people operating the devices.

Clause 97 of the bill would empower an authorised W-ECM user to use the device to detect, intercept, transmit, retransmit, disable, disrupt, or interfere with a radiocommunication. An authorised user could be a constable or a person acting for a foreign security agency.

Clause 96 sets out the conditions of authorisation. They include requirements to securely:

- store and transport an authorised W-ECM
- export or otherwise dispose of an authorised W-ECM at the end of the authorisation
- store and protect any information received via a W-ECM
- dispose of that information as soon as it is no longer required for the purposes of the legislation.

### **Using W-ECMs to intercept communications**

The bill as introduced contains several examples of W-ECM uses that could be authorised. An example is responding to an incident where it may be necessary to locate a person holding the transmitter of a drone or the triggering device of a bomb. This could be done by detecting and tracking the radiocommunications between the transmitter and the drone. To identify and locate the person, it could be necessary to intercept all signals being sent from devices in the immediate vicinity. We understand that this could result in some private information being intercepted.

We recognise the potential privacy issues. However, we were subsequently advised that W-ECM equipment that can intercept and analyse private communications is not needed to secure APEC 2021.

Accordingly, we recommend amending clause 97 to ensure that the Commissioner could not authorise the interception, storage, or analysis of private communications. This would also apply to any authorisations granted by the Commissioner for a visiting APEC economy to use a W-ECM.

We were advised that related changes are required. We recommend amending clause 96(1)(d) and inserting a new clause 96A to address the admissibility of any information gathered by a W-ECM. This information could not include a private communication (but could be, for example, the frequency and time of a radiocommunication).

We sought assurances from our advisers that this proposed amendment would still mean that credible threats could be responded to. We were assured that advisers are comfortable that there are no gaps between the bill and existing legislation.

### **Views of the Privacy Commissioner about private communication**

We sought the views of the Privacy Commissioner about the privacy implications of our proposed amendment to clause 97.

Section 216A of the Crimes Act 1961 defines private communication as

- communication (whether in oral or written form or otherwise) made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but
- does not include such a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so.

The Privacy Commissioner noted that the term “private communication” is outdated in the modern communications environment.<sup>3</sup> He considers that the term creates uncertainty about the specific scope of the authorising power for W-ECMs. For example, he queried whether an individual sending an email over an unencrypted Wi-Fi channel should have reasonably expected that their communication could be intercepted.

The Privacy Commissioner proposed several alternatives that would mean that the power to authorise the use of W-ECMs had little to no privacy implications. They involved using the broader term “private information” from the Privacy Act or replacing “private communication” with “communication”.

The Privacy Commissioner also suggested that clause 97 of the bill could be amended to explicitly state the W-ECM uses that would be permitted. This would avoid the term “private communication”, which he believed would remove uncertainty for the authorising power. The Privacy Commissioner also considered that this would help foreign security agencies understand and comply with the legislation.

We acknowledge the Privacy Commissioner’s concerns. However, we note that the Crimes Act uses the term “private communication”. That Act would be used to enforce any breaches of W-ECM conditions. (The Radiocommunications Act 1989 could also be used.) Further, we do not believe that the bill should explicitly state the authorised uses of W-ECMs. We consider that possible uses could be missed if the uses in clause 97 were too prescriptive.

### **Delegated authority to make certain decisions**

Section 17 of the Policing Act 2008 authorises the Commissioner to delegate any of their powers, functions, or duties under legislation to any person. Clause 103 of the bill provides that the Commissioner can only delegate certain decisions to a Deputy Commissioner, or a Police employee of an equivalent level. The decisions relate to

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<sup>3</sup> “Private communication” was inserted into the Crimes Act in 1979 and has remained largely unchanged.

authorising the use of W-ECMs and authorising foreign protection officers to carry, possess, and import weapons.

We note that the Commissioner is required to consider several factors and consult relevant people when deciding whether to create security areas under clauses 47 to 50 of the bill.<sup>4</sup> Given this, and the powers that the provisions in these clauses bestow, we consider that the ability to delegate this authority should be more limited.

Accordingly, we recommend amending clause 103. Our proposed amendment would mean that the Commissioner could only delegate the decision to create a security area to a constable who is at, or above, the level of Superintendent. This is a senior Police position, which is equivalent to those commanding one of New Zealand's 12 Police Districts.

### **Compensation**

Clause 114 of the bill provides that a person would not be entitled to compensation for actions or omissions by constables or others who acted in accordance with the legislation. However, we believe this is inconsistent with clause 111, which specifies that a person would only be immune from civil and criminal liability for acts or omissions if they have acted reasonably and in good faith.

We recommend that clause 114 be amended to provide that a person may be entitled to compensation. Under our proposed amendment, the constable, or other person acting in accordance with the legislation, would need to have acted unreasonably and in bad faith.

### **Compensation for occupiers of private residences**

Subpart 1 of Part 3 contains a number of provisions that could affect occupiers of private residences.

Clause 48 would enable the Commissioner to authorise a planned closure of a privately owned place. Clause 51 as introduced would allow a constable to make a reactive closure of any place.<sup>5</sup>

Under clause 61(4), owners and occupiers of privately owned or public places could be excluded, or removed, from the place while they are closed under this subpart. However, clause 60(2) provides that constables could only enter a security area or secure transport route that is a home or marae in accordance with clauses 66(2) to (5)<sup>6</sup> or 86 (Power to enter or search).

Clause 66 provides that a constable could enter and search a security area or secure transport route to search for any item, substance, or other thing that presents a risk to

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<sup>4</sup> These clauses relate to the planned closures of public places, privately owned places, roads, and marine areas.

<sup>5</sup> A place closed under clauses 47 to 51 is a security area under clause 44 of the bill.

<sup>6</sup> This clause relates to the power to search a security area or secure transport route.

security. However, the consent of an occupier, or a warrant, would be required to search any home or marae in the security area or secure transport route.

Clauses 62 to 71 set out the powers of a constable, or a member of APEC security staff, in a security area and secure transport route.

They include powers to:

- prevent entry, or remove a person or thing (clause 62)
- require identification from people wanting to enter or remain (clause 63)
- stop or limit any activity by a person that may cause a risk to security (clause 64)
- stop vehicles or vessels (clause 65)
- screen and search people or things (clause 70).

We discussed our concerns that people who live in private residences inside planned APEC security areas would not be compensated. These people could be prevented from being in their homes due to security risks or if they did not consent to screening when entering the security area.

We received advice that only one security area containing private residences is currently planned. This is inside a hotel complex where an APEC economy leader will be staying and security will need to be placed at the entrance. Residents would be required to be screened on entry. This screening would be for a period of two to four days.

After much consideration, we do not propose recommending an amendment to require the payment of compensation to occupiers of private residences. This is because:

- the policy agreed by Cabinet does not provide for entitlement to compensation
- general law may provide for compensation
- no precedent exists for compensation to be paid to private residents who have been disrupted by road closures and other measures as a result of recent major events in Auckland
- the level of disruption for residents from the security screening process is considered to be low.

Further, we note that the bill does not preclude the payment of compensation if a decision was made to do so.

### **Independent Police Conduct Authority**

Clause 123 would amend the Independent Police Conduct Authority Act 1988. It would require members of the Armed Forces who were assisting the Police during APEC 2021 to be treated as if they were a Police employee for the purposes of that Act.

We note that the bill as introduced would extend the supervision of the Independent Police Conduct Authority (IPCA) to all members of the Armed Forces who are help-

ing the Police during APEC 2021. We do not believe that the IPCA Act should apply to members of the Armed Forces who are not authorised as constables under subpart 1 of Part 2 of the bill. Therefore, we recommend amending clause 123. This would make it clear that only members of the Armed Forces who were authorised to act as constables would be treated as if they were Police employees for the purposes of the IPCA Act. We recommend making the equivalent change to the amendment to the Policing Act in clause 126. This would ensure that members of the Armed Forces who are authorised to act as constables would be treated as police employees.

### **Application of the Visiting Forces Act to foreign military personnel**

Ordinarily, foreign military personnel in New Zealand are covered by the Visiting Forces Act 2004. Under that Act, concurrent jurisdiction exists for criminal matters. This means that any acts or omissions while performing their official duties would generally be under the jurisdiction of the military personnel's home country. However, New Zealand would have primary jurisdiction for any acts or omissions committed outside of official duties.

We were advised that the Government's policy intent is that foreign protection officers would not have any immunity for any action during the period they are in New Zealand supporting their economy's attendance at APEC 2021. This policy is intended to ensure that foreign protection officers are held accountable for their actions in New Zealand. This is particularly important for foreign protection officers who could be authorised to carry weapons.

Foreign military personnel who are in New Zealand for APEC 2021 performing roles other than as foreign protection officers would be subject to the Visiting Forces Act. This would mean that those military personnel would have a form of immunity for actions taken during the course of their duties.

We recommend amending clause 128 to make it clear that the Visiting Forces Act would not apply to any foreign military personnel supporting their economy's participation in APEC 2021. We acknowledge that this approach is wider than the original policy intent. However, we consider that our proposed amendment is more transparent, removes ambiguity, and would be easier to enforce.

## **Appendix**

### **Committee process**

The Asia-Pacific Economic Cooperation (APEC 2021) Bill was referred to the committee on 20 November 2019. The closing date for submissions was 12 February 2020. We received and considered 99 submissions from 94 interested groups and individuals. We heard oral evidence from 26 submitters at hearings in Wellington.

We received advice from the Ministry of Foreign Affairs and Trade, the New Zealand Police, the New Zealand Defence Force, the Ministry of Defence, the Government Communications Security Bureau, and the New Zealand Security Intelligence Service.

### **Committee membership**

Simon O'Connor (Chairperson)

Hon Gerry Brownlee

Paulo Garcia

Golriz Ghahraman

Hon Todd McClay

Priyanca Radhakrishnan

Hon Aupito William Sio

Louisa Wall



**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Rt Hon Winston Peters*

## **Asia-Pacific Economic Cooperation (APEC 2021) Bill**

Government Bill

### **Contents**

	Page
1 Title	6
2 Commencement	6
<b>Part 1</b>	
<b>Preliminary provisions</b>	
3 Repeal of this Act	6
4 Purpose	7
5 Act prevails	7
6 Definitions	7
7 Act binds the Crown	11
8 Status of examples	11
9 Power to designate protected persons	11
<b>Part 2</b>	
<b>Policing and other security staff</b>	
Subpart 1—Armed Forces	
10 Purpose of this subpart	12
<i>Authority for member of Armed Forces to assist Police</i>	
11 Authority for member of Armed Forces to assist Police	12
12 Criteria for member of Armed Forces to assist Police	12
13 Conditions on authority	13
14 Information required on authority	13
<i>Requirements and protections of authorised Armed Forces members</i>	
15 Requirements and protections of authorised Armed Forces members	13

**Asia-Pacific Economic Cooperation (APEC 2021) Bill**

---

16	Information sharing between Police and Armed Forces about member of Armed Forces	14
	<i>Subpart 2—APEC security staff</i>	
17	Purpose of this subpart	14
	<i>Authorisation of APEC security staff</i>	
18	Authority for APEC security staff to assist Police	14
19	Criteria for APEC security staff to assist Police	15
20	Conditions on authority	15
21	Information required on authority	15
22	Identification card	15
23	Production, inspection, and display of identification card	16
24	Destruction or return of identity card	16
	<i>Requirements and protections of APEC security staff</i>	
25	APEC security staff under constable’s instruction and direction	16
26	Information sharing between Police and employer about APEC security staff	16
	<i>Commissioner’s obligation to inform Minister of Police about APEC security staff</i>	
27	Commissioner must inform Minister of Police about APEC security staff	17
	<i>Offences</i>	
28	Impersonation of constable	17
29	Impersonation of APEC security staff	17
	<i>Subpart 3—Foreign protection officers</i>	
30	Purpose of this subpart	18
31	Interpretation in this subpart	18
	<i>Authority to carry and possess, and permit to import, specified weapons</i>	
32	Application for authority or permit	18
33	Authority for foreign protection officer to carry and possess specified weapons	18
34	Maintenance, testing, and practice	18
35	Permit for temporary importation of specified weapons by foreign protection officer	19
36	Consultation and grounds for authority or permit	19
37	Information required on authority	20
38	Information required on permit	20
39	Conditions of authority and permit	20
40	Production and inspection	21

41	Revocation of authority or permit: items to be removed from New Zealand	21
	<i>Seizure of unlawful items</i>	
42	Seizure of items for unlawful importation or unlawful carriage or possession	22
	<b>Part 3</b>	
	<b>Security areas</b>	
	Subpart 1—Securing places	
43	Purpose of this subpart	22
	<i>Security areas</i>	
44	Place closed is security area	22
45	Meaning of closure of security area	23
46	Public notification of security area	23
47	Planned closure of public place	23
48	Planned closure of privately owned place	23
49	Planned closure of road	24
50	Planned closure of marine area	24
51	Reactive closure of any place	25
	<i>Secure transport routes</i>	
52	Route closed is secure transport route	25
53	Meaning of closure of secure transport route	25
54	Meaning of temporarily	25
55	Public notification of secure transport route	25
56	Temporary closure of land transport route	26
57	Temporary closure of marine transport route	26
58	Training to close secure transport route	27
	<i>Constable's permission required to enter or remain in security area or secure transport route</i>	
59	Constable's permission required to enter or remain in security area or secure transport route	27
	<i>Effect of closure of security area or secure transport route</i>	
60	Effect of closure of security area or secure transport route	27
	<i>Effect of closure on rights of owners and occupiers of privately owned place or public place</i>	
61	Effect of closure on rights of owners and occupiers of privately owned place or public place	27
	<i>Powers in security area and secure transport route</i>	
62	Power to prevent entry and power to remove	28
63	Power to require identification from people wanting to enter or remain	28

**Asia-Pacific Economic Cooperation (APEC 2021) Bill**

---

64	Power to stop or limit any activity	28
65	Power to stop vehicles or vessels	28
66	Power to search security area or secure transport route	29
67	Meaning of screening	29
68	Consent: screening and searching people and things	30
69	No consent means power to prevent entry or remove	30
70	Screening and searching people and things	30
71	Searching and screening persons: requirements and incidental powers	31
72	Seizure of items found	32
	<i>Obligation to comply with requirement, condition, direction, or prohibition</i>	
73	Obligation to comply with requirement, condition, direction, or prohibition	32
	<i>Offences</i>	
74	Offence to enter or remain in security area or secure transport route without permission	33
75	Offence to breach or fail to comply with requirement, condition, direction, or prohibition	33
76	Offence to interfere with closure of security area or secure transport route	33
77	Offence to fail to stop (or keep stopped) a vehicle or vessel	34
	Subpart 2—Securing airspace	
78	Purpose of this subpart	34
79	Civil Aviation Act 1990 rules may be made about risk to security at APEC	34
80	APEC security airspace: designation	34
81	APEC security airspace: emergency rules	35
	<i>Powers in APEC security airspace</i>	
82	Aircraft without person on board: power to seize, etc	35
83	Aircraft with person on board: power to seize or detain	35
84	Limits on detention or seizure power	36
85	Power to prohibit, impose conditions, or direct	36
86	Power to enter and search	36
87	Power to require personal details, etc	37
	<i>Offences</i>	
88	Offence to operate aircraft or do activity in breach of APEC security airspace or rule	37
89	Offence to breach or fail to comply with requirement, condition, direction, or prohibition	37

Subpart 3—Securing radio spectrum		
90	Purpose of this subpart	38
<i>Authorisation of W-ECM use</i>		
91	Consultation requirements: Commissioner	38
92	Authorisation of W-ECM use	38
93	Planned use	39
94	Reactive use	39
95	Supply, importation, and exportation	39
96	Conditions of authorisation	39
<u>96A</u>	<u>Admissibility of evidential material</u>	<u>40</u>
<i>Powers to use authorised W-ECM</i>		
97	Powers to use authorised W-ECM	40
<b>Part 4</b>		
<b>Offences, appeals, general provisions about powers, immunities, and related amendments, etc</b>		
Subpart 1—Offences		
98	General penalty for offences	41
Subpart 2—Appeals		
99	Appeal to District Court	42
100	Consequences of appeal to District Court	42
101	Appeal to High Court on question of law	42
102	Further appeal to Court of Appeal	43
Subpart 3—Limitation on delegation by Commissioner		
103	Limitation on delegation by Commissioner	43
Subpart 4—General provisions about powers		
104	Application of this subpart	43
105	Identification on request	43
106	Power to use reasonable force	44
107	Power to request assistance and to use aids	44
108	Powers of people called to assist	44
Subpart 5—Exercise of power does not prevent other action or exercise of other power		
109	Exercise of power does not prevent other action or exercise of other power	45
Subpart 6—Immunities		
110	Application of this subpart	45
111	Immunities	45
112	Immunity of the Crown	46
113	Immunities of issuing officer	46

	Subpart 7—Compensation	
114	No entitlement to compensation	46
115	Compensation for property damaged or destroyed	46
	Subpart 8—Public notification	
116	Public notification	46
	Subpart 9—Failure to consult does not affect decision’s validity	
117	Failure to consult does not affect decision’s validity	47
	Subpart 10—Related and consequential amendments	
	<i>Related amendments</i>	
118	Arms Act 1983 amended	47
119	Civil Aviation Act 1990 amended	48
120	<del>Crimes Act 1961</del> amended	48
121	Customs and Excise Act 2018 amended	48
122	Defence Act 1990 amended	48
123	Independent Police Conduct Authority Act 1988 amended	48
124	Land Transport (Road User) Rule 2004 amended	49
125	Maritime Transport Act 1994 amended	49
126	Policing Act 2008 amended	49
127	Radiocommunications Act 1989 amended	50
128	Visiting Forces Act 2004 amended	50
	<i>Consequential amendment</i>	
129	Consequential amendment	51
	<b>Schedule</b>	52
	<b>Consequential amendment</b>	

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**.

**2 Commencement**

This Act comes into force on **1 July 2020**.

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**Part 1**

**Preliminary provisions**

**3 Repeal of this Act**

- (1) This Act, and the amendments made by this Act to other enactments, are repealed on the close of 21 November 2021 (which is the end of the leaders’ event period). 10

- (2) On the repeal, the provisions amended by this Act are restored as if those amendments had not been made by this Act.
- (3) However, the restoration does not otherwise affect the previous operation of the amended provisions or anything done under them.
- 4 Purpose** 5
- (1) The primary purpose of this Act is to ensure the security of all involved in APEC 2021, as well as the security of media and members of the public.
- (2) The secondary purpose of this Act is to facilitate the timely and efficient operation of APEC 2021.
- 5 Act prevails** 10
- If there is any inconsistency between this Act and any other enactment, this Act prevails.
- 6 Definitions**
- In this Act, unless the context otherwise requires,—
- accreditation** means an approval process provided by the Ministry of Foreign Affairs and Trade indicating whether a person is approved to attend an APEC event or a leaders' event 15
- aerodrome** has the meaning given in section 2(1) of the Civil Aviation Act 1990
- aircraft** has the meaning given in section 2(1) of the Civil Aviation Act 1990 20
- APEC** means Asia-Pacific Economic Cooperation
- APEC 2021** means the series of events to be held in New Zealand between December 2020 and November 2021
- APEC economy** means an economy that is a member of APEC at any relevant time during APEC 2021 25
- APEC event**—
- (a) means a meeting, presentation, workshop, activity, or other event held as part of APEC in New Zealand, and includes the period that begins 3 days before the event and ends 3 days after the event; but
- (b) does not include a leaders' event 30
- APEC leader** means a person who, in relation to an APEC economy, is at the relevant time during APEC 2021—
- (a) a head of State; or
- (b) a member of a body that performs the functions of a head of State under the constitution of the State; or 35
- (c) a head of Government; or

- (d) a person whom an APEC economy sends to New Zealand to represent the economy at APEC 2021 as a leader

**APEC security airspace** means airspace designated under **section 80**

**APEC security staff** means people authorised under **section 18** (whose appointment has not expired or been revoked) 5

**Armed Forces** has the meaning given in section 2(1) of the Defence Act 1990

**Australian Police** means—

- (a) Australia’s national policing agency; or  
 (b) the policing agency of an Australian state

**authorised W-ECM user** means a person authorised under **section 92** to use W-ECMs 10

**Chief of Defence Force** means the person appointed under section 8 of the Defence Act 1990

**close,**—

- (a) in relation to a security area, means closing it using one of the methods referred to in **section 45** or any other practicable method; and 15  
 (b) in relation to a secure transport route, means closing it using one of the methods referred to in **section 53** or any other practicable method

**Commissioner** has the meaning given in section 4 of the Policing Act 2008

**constable** has the meaning given in section 4 of the Policing Act 2008 20

**Customs-controlled area** has the meaning given in section 5(1) of the Customs and Excise Act 2018

**Customs officer** has the meaning given in section 5(1) of the Customs and Excise Act 2018

**Director** has the meaning given in section 2(1) of the Civil Aviation Act 1990 25

**firearm** has the meaning given in section 2(1) of the Arms Act 1983

**foreign protection officer** means any person acting for the Government of an APEC economy (other than New Zealand), or an international organisation, to protect a protected person

**foreign security agency** means an agency that provides personal security for— 30

- (a) the Government of an APEC economy (other than New Zealand); or  
 (b) an international organisation

**government agency** means,—

- (a) in relation to an APEC economy other than New Zealand, a person or body that performs or exercises a public function, duty, or power conferred on that person or body by or under the law of the APEC economy; and 35  
 (b) in relation to New Zealand, a New Zealand government agency

- harbourmaster** has the meaning given in section 2(1) of the Maritime Transport Act 1994
- international organisation** means any organisation of States or Governments of States or any organ or agency of any such organisation
- issuing officer** has the meaning given in section 3(1) of the Search and Surveillance Act 2012 5
- leaders' event** means a meeting, presentation, workshop, activity, or other event in New Zealand during the leaders' event period to which either or both of the following apply:
- (a) it is held as part of APEC: 10
  - (b) an APEC leader or a protected person is present
- leaders' event period** means—
- (a) the week of 8 to 14 November 2021, during which APEC leaders will meet together in New Zealand; and
  - (b) the week before (1 to 7 November 2021) and the week after that week (15 to 21 November 2021), during which there will be bilateral meetings between APEC leaders 15
- marine area** means an area of the sea that is in the internal waters of New Zealand (as defined in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977) 20
- New Zealand government agency** means an organisation named in—
- (a) Schedule 1 of the Ombudsmen Act 1975; or
  - (b) Schedule 1 of the Official Information Act 1982
- operate**, in relation to an aircraft, means to fly or use the aircraft, or to cause or permit the aircraft to fly, be used, or be in any place, whether or not the person operating the aircraft is present with it 25
- part** has the meaning given in section 2(1) of the Arms Act 1983
- personal details**, in relation to a person, means the person's full name, full address, date of birth, occupation, and telephone number
- pistol** has the meaning given in section 2(1) of the Arms Act 1983 30
- place** means a public place, a privately owned place, a road, or a marine area
- Police employee** has the meaning given in section 4 of the Policing Act 2008
- policing** has the meaning given in section 4 of the Policing Act 2008
- privately owned place** means a place that, at any material time, is not—
- (a) a public place; or 35
  - (b) a road; or
  - (c) a marine area

**protected person** means a person who is in New Zealand to attend an APEC event or a leaders' event and is—

- (a) an APEC leader; or
- (b) a head of State or a head of Government of a Pacific Island country; or
- (c) designated as a protected person under **section 9**; or 5
- (d) a member of the family of a person referred to in **paragraph (a), (b), or (c)** who is accompanying that person

**public place** means a place that, at any material time,—

- (a) is open to or is being used by the public, whether free or on payment of a charge, and whether or not any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and 10
- (b) is not—
  - (i) a road; or
  - (ii) a marine area

**publicly notify** means to notify in accordance with **section 116** 15

**Radiocommunications Secretary** has the meaning given to Secretary in section 2(1) of the Radiocommunications Act 1989

**remote control** means a controlling device that—

- (a) is part of the system of communications connecting a person operating an aircraft to that aircraft; and 20
- (b) is not present on board or with the aircraft

**restricted weapon** has the meaning given in section 2(1) of the Arms Act 1983

**risk item or substance** means any item or substance that could cause or is causing a risk to security (for example, a hazardous substance within the meaning given in section 2(1) of the Hazardous Substances and New Organisms Act 1996) 25

**risk to security** means the risk of a situation during, and at or near, an APEC event or a leaders' event that could cause—

- (a) the death of, or injury or harm to, any person or animal; or
- (b) the destruction of, or damage to, any of the following: 30
  - (i) any premises, building, erection, structure, installation, road, or other infrastructure (including information infrastructure within the meaning given in section 4 of the Intelligence and Security Act 2017):
  - (ii) any vehicle, aircraft, or vessel: 35
  - (iii) any natural feature that is of such beauty, uniqueness, or scientific, economic, or cultural importance that its preservation from destruction, damage, or injury is in the national interest:

	(iv) any property of any kind that has significant historical, archaeological, scientific, cultural, literary, or artistic value or importance	
	<b>road</b> has the meaning given in section 35(2) of the Policing Act 2008	
	<b>road controlling authority</b> has the meaning given in section 2(1) of the Land Transport Act 1998	5
	<b>screening</b> has the meaning given in <b>section 67</b>	
	<b>secure transport route</b> has the meaning given in <b>section 52</b>	
	<b>security area</b> has the meaning given in <b>section 44</b>	
	<b>temporarily</b> , in relation to a secure transport route, has the meaning given in <b>section 54</b>	10
	<b>thing</b> includes, without limitation, an item, substance, vehicle, or vessels	
	<b>traffic</b> means all or any type of traffic, and includes—	
	(a) pedestrian traffic; and	
	(b) traffic of any kind of—	
	(i) vehicles; or	15
	(ii) vessels	
	<b>traffic control device</b> has the meaning given in section 2(1) of the Land Transport Act 1998	
	<b>vehicle</b> has the meaning given in section 2(1) of the Land Transport Act 1998, except that it includes a rail vehicle	20
	<b>vessel</b> means a ship (within the meaning given in section 2(1) of the Maritime Transport Act 1994), craft, or seaplane (within the meaning given in section 2(1) of that Act)	
	<b>W-ECM</b> (wireless electronic countermeasure) means any equipment or device that does any or all of the following: detect, intercept, disable, disrupt, or interfere with radiocommunications.	25
<b>7</b>	<b>Act binds the Crown</b>	
	This Act binds the Crown.	
<b>8</b>	<b>Status of examples</b>	
(1)	An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.	30
(2)	If an example and a provision to which it relates are inconsistent, the provision prevails.	
<b>9</b>	<b>Power to designate protected persons</b>	
	The Commissioner may designate any person as a protected person if, in the Commissioner’s opinion, the person requires personal protection during APEC 2021.	35

## Part 2 Policing and other security staff

### Subpart 1—Armed Forces

#### 10 Purpose of this subpart

The purpose of this subpart is to allow the Commissioner to authorise members of the Armed Forces to— 5

- (a) assist the Police for the purposes of this Act by performing the functions and exercising the powers of a constable during the leaders' event period; and
- (b) undertake any training required to do that. 10

#### *Authority for member of Armed Forces to assist Police*

#### 11 Authority for member of Armed Forces to assist Police

- (1) The Commissioner may, by authority granted in accordance with **section 12**, authorise a member of the Armed Forces—
  - (a) to assist the Police for the purposes of this Act by performing the functions and exercising the powers of a constable during the leaders' event period; and 15
  - (b) from the commencement of this section, to undertake any training required to do that.
- (2) The training authorised must be for specified periods and may include performing the functions and exercising the powers of a constable during those periods. 20
- (3) An authority is in addition to any assistance the Armed Forces may provide under the Defence Act 1990.

#### 12 Criteria for member of Armed Forces to assist Police

- (1) The Commissioner may grant the authority to a member of the Armed Forces if the Commissioner is satisfied that— 25
  - (a) the member's assistance to the Police is required to achieve a purpose of this Act; and
  - (b) the member has the knowledge and skills necessary to undertake any training, role, or task required for that assistance; and 30
  - (c) the Chief of Defence Force has directed that member to assist.
- (2) The Commissioner may specify in the authority any limit to the powers of a constable that are available to the member as the Commissioner thinks fit, having considered—
  - (a) the role or tasks the member will be undertaking; and 35

- (b) any training required by the member to undertake that role or those tasks.

### **13 Conditions on authority**

The Commissioner may impose any conditions on an authority the Commissioner thinks fit. 5

### **14 Information required on authority**

An authority must state the following:

- (a) the full name of the member of the Armed Forces it authorises:  
 (b) the date on which the authority is granted:  
 (c) the period during which the authority is valid: 10  
 (d) any limit to the powers of a constable that are available to the member:  
 (e) any conditions that apply to the authority.

### *Requirements and protections of authorised Armed Forces members*

### **15 Requirements and protections of authorised Armed Forces members**

- (1) A member of the Armed Forces authorised under this subpart— 15
- (a) must act in accordance with the lawful instructions and directions of the constable who is in charge of a policing operation or training in which the member is taking part or will take part; and  
 (b) is subject to all accountability mechanisms that apply to constables; and  
 (c) remains subject to all disciplinary action that may be taken against a member of the Armed Forces; and 20  
 (d) has, for the purposes of civil and criminal liability, all the protections of a constable and a member of the Armed Forces; and  
 (e) must act in accordance with any limits or conditions on the powers of a constable specified in their authority. 25
- (2) At any time that a member of the Armed Forces is under the operational control of the Police in accordance with an authority,—
- (a) the member is not a Police employee for the purposes of the Policing Act 2008; and  
 (b) the member remains a member of the Armed Forces and under the command of the Chief of Defence Force; and 30  
 (c) nothing affects the member's oath of allegiance under Part 4 of the Defence Act 1990; and  
 (d) the period of continuous service required by the member under Part 4 of the Defence Act 1990 is not interrupted. 35

**16 Information sharing between Police and Armed Forces about member of Armed Forces**

- (1) The Commissioner and the Chief of Defence Force may share relevant information (before or after the expiry of this Act).
- (2) In this section, **relevant information** means information about the actions and conduct of a member of the Armed Forces during the time the member is authorised under this subpart. 5

Subpart 2—APEC security staff

**17 Purpose of this subpart**

The purpose of this subpart is to allow the Commissioner to authorise appropriately trained people to assist Police during the leaders' event period for the purposes of this Act. 10

*Authorisation of APEC security staff*

**18 Authority for APEC security staff to assist Police**

- (1) The Commissioner may, by authority granted in accordance with **section 19**, authorise a person described in **subsection (2)** to assist the Police during the leaders' event period for the purposes of this Act by exercising specified powers given in this Act. 15
- (2) The people are—
- (a) an employee of a New Zealand government agency (for example, the New Zealand Customs Service, the Police, or the Aviation Security Service): 20
- (b) a member of the Australian Police:
- (c) ~~a crowd controller (within the meaning given in section 11 of the Private Security Personnel and Private Investigators Act 2010) or crowd controller employee (within the meaning given in section 19 of that Act):~~ 25
- (c) any of the following (within the meanings given in the Private Security Personnel and Private Investigators Act 2010):
- (i) a crowd controller:
- (ii) a crowd controller employee: 30
- (iii) a property guard:
- (iv) a property guard employee.
- (3) The authority is in addition to the Commissioner's power to appoint a member of the Australian Police (or any other person) as a Police employee under section 18 of the Policing Act 2008, who may become a constable in accordance with section 22 of that Act. 35

**19 Criteria for APEC security staff to assist Police**

- (1) The Commissioner may grant the authority if the Commissioner is satisfied that—
- (a) the person’s assistance is required to achieve a purpose of this Act; and
  - (b) the person has the knowledge and skills necessary to undertake any training, role, or task required for that assistance; and 5
  - (c) the person is adequately trained; and
  - (d) the person’s employer (if any) has agreed to the person assisting.
- (2) The Commissioner may specify in the authority any limit to the specified powers as the Commissioner thinks fit, considering— 10
- (a) the role or tasks the person will be undertaking; and
  - (b) any training required by the person to undertake that role or those tasks.

**20 Conditions on authority**

The Commissioner may impose any conditions on an authority the Commissioner thinks fit. 15

**21 Information required on authority**

An authority must state the following:

- (a) the full name of the person it authorises;
- (b) the name of any organisation that employs the person;
- (c) the date on which the authority is granted; 20
- (d) the period during which the authority is valid;
- (e) any limit to the powers that are available to the person;
- (f) all conditions that apply to the authority.

**22 Identification card**

- (1) The Commissioner must issue to each member of APEC security staff an identification card. 25
- (2) The identification card may be in any form the Commissioner thinks appropriate and must, in addition to anything else required by the Commissioner,—
- (a) state the person’s full name;
  - (b) display a recent photograph of the person; 30
  - (c) identify the person as a member of APEC security staff for the purposes of this Act;
  - (d) state an expiry date for the card;
  - (e) state a unique number.

**23 Production, inspection, and display of identification card**

- (1) A constable may at any time—
- (a) require a member of APEC security staff to produce their identification card for inspection; and
  - (b) inspect the identification card produced. 5
- (2) When exercising a power given by this Act, **section 105** applies to a member of APEC security staff, who must also,—
- (a) ~~if reasonably practicable,~~ produce their identification card for inspection before exercising the power; or
  - (b) display the identification card so it is clearly visible when exercising the power. 10

**24 Destruction or return of identity card**

A person who ceases to be authorised under this subpart must immediately destroy their identity card or, if requested, return it to the Commissioner as soon as practicable (but within 2 days) after their authority expires or is revoked. 15

*Requirements and protections of APEC security staff***25 APEC security staff under constable's instruction and direction**

- (1) A member of APEC security staff must act in accordance with—
- (a) the lawful instructions and directions of the constable who is in charge of a policing operation, activity, or training in which the member is taking part or will take part; and 20
  - (b) any limits or conditions on their authority.
- (2) APEC security staff members must conduct themselves in accordance with the code of conduct for Police employees prescribed under section 20 of the Policing Act 2008. 25

**26 Information sharing between Police and employer about APEC security staff**

- (1) The Commissioner and an APEC security staff member's employer (if any) may share relevant information (before or after the expiry of this Act). 30
- (2) In this section,—

**employer** means any person who employed the APEC security staff member at the time the member was authorised under this subpart

**relevant information** means information about the actions and conduct of an APEC security staff member during the time the member is authorised under this subpart. 35

*Commissioner's obligation to inform Minister of Police about APEC security staff*

**27 Commissioner must inform Minister of Police about APEC security staff**

The Commissioner must inform the Minister of Police about any authorisation of APEC security staff under **section 18**, and must also inform the Minister of— 5

- (a) the likely numbers of APEC security staff; and
- (b) the types of any limits or conditions on the authorisations; and
- (c) the reasons why the authorisations are required.

*Offences* 10

**28 Impersonation of constable**

- (1) No member of APEC security staff may, with the intention of misleading any person,—
  - (a) either orally or in writing, claim, suggest, or imply that, by virtue of their authorisation under **section 18**, they have any power or authority that they do not have in law; or 15
  - (b) use their authorisation for exercising, claiming, suggesting, or implying such a power or authority; or
  - (c) wear any article of clothing, badge, or other article that is likely to cause any member of the public to believe that they are a constable. 20
- (2) A person who breaches **subsection (1)** commits an offence against this Act.  
Compare: 2010 No 115 s 109(2)

**29 Impersonation of APEC security staff**

- (1) Unless a member of APEC security staff, no person may, with the intention of misleading any person,— 25
  - (a) either orally or in writing, claim, suggest, or imply they are a member of APEC security staff; or
  - (b) wear any article of clothing, badge, or other article that is likely to cause any member of the public to believe that they are a member of APEC security staff. 30
- (2) A person who breaches **subsection (1)** commits an offence against this Act.  
Compare: 2010 No 115 s 110(2)

## Subpart 3—Foreign protection officers

**30 Purpose of this subpart**

The purpose of this subpart is to authorise certain foreign protection officers to carry, possess, and import specified weapons to protect protected persons during the leaders' event period.

5

**31 Interpretation in this subpart**

Unless the context otherwise requires, any word or expression used in this subpart but not defined in **section 6** has the same meaning as it has in the Arms Act 1983.

*Authority to carry and possess, and permit to import, specified weapons* 10

**32 Application for authority or permit**

A foreign protection officer (or someone on their behalf) may, for the purpose of protecting a protected person during the leaders' event period, apply to the Commissioner for—

- (a) an authority to carry and possess in New Zealand any firearm, pistol, restricted weapon, part, magazine, or ammunition; and 15
- (b) a permit to import into New Zealand any firearm, pistol, restricted weapon, part, magazine, or ammunition.

**33 Authority for foreign protection officer to carry and possess specified weapons** 20

Despite anything in the Arms Act 1983, the Commissioner may grant an authority authorising a foreign protection officer, for a specified period of time during the leaders' event period, to carry and possess in New Zealand any of the following specified in the authority:

- (a) firearms: 25
- (b) pistols:
- (c) restricted weapons:
- (d) parts:
- (e) magazines:
- (f) ammunition. 30

**34 Maintenance, testing, and practice**

(1) Unless otherwise provided in an authority, the following activities are authorised by an authority as well as carriage and possession:

- (a) required routine maintenance or testing of an authorised item for the purpose of ensuring that the item functions safely and as intended: 35

- (b) assembling or disassembling an authorised item for the purpose of practising or ensuring that the item functions safely and as intended:
- (c) testing involving firing of an authorised item for the purpose of ensuring that—
  - (i) the item functions safely and as intended; or 5
  - (ii) the officer has maintained standards to effectively use the item if required.
- (2) An activity authorised by **subsection (1)** may be carried out only—
  - (a) by the foreign protection officer who is authorised under this subpart to carry and possess the item; and 10
  - (b) during the period specified in the authority.
- (3) An activity authorised by **subsection (1)(c)** may be carried out only—
  - (a) in a location and in a manner that is approved by the Commissioner; and
  - (b) under the supervision of a constable.
- 35 Permit for temporary importation of specified weapons by foreign protection officer** 15
- (1) Despite anything in the Arms Act 1983, the Commissioner may grant a permit permitting a foreign protection officer to import into New Zealand, for carriage and possession by that officer (and any other specified foreign protection officer) for a specified period of time during the leaders' event period, any of the following specified in the permit: 20
  - (a) firearms:
  - (b) pistols:
  - (c) restricted weapons:
  - (d) parts: 25
  - (e) magazines:
  - (f) ammunition.
- (2) A permit to import also permits the export of the items.
- 36 Consultation and grounds for authority or permit**
- (1) The Commissioner may grant an authority or a permit to a foreign protection officer after— 30
  - (a) consulting the Secretary of Foreign Affairs and Trade; and
  - (b) being satisfied that the protected person whom the foreign protection officer is employed to protect will be visiting New Zealand during the leaders' event period; and 35
  - (c) receiving an assurance from the relevant APEC economy that the person—

- (i) has the knowledge and skills necessary to protect the protected person; and
  - (ii) is adequately trained.
- (2) ~~The~~ As well as other relevant considerations, the Commissioner must take account of the extent of the protection that, in the Commissioner's opinion, is required to protect the protected person when deciding— 5
- (a) whether to grant an authority or a permit; and
  - (b) what conditions to impose on an authority or a permit.

### 37 Information required on authority

- (1) Every authority must state the following: 10
- (a) the full name of the foreign protection officer to whom it is granted:
  - (b) the name of the ~~foreign government~~ APEC economy or international organisation that the foreign protection officer is acting for:
  - (c) the name of each protected person who is to be protected by the foreign protection officer while that person is in New Zealand: 15
  - (d) the date on which it is granted:
  - (e) the period to which it applies:
  - (f) particulars of the quantity and type (including serial numbers) of firearms, pistols, restricted weapons, parts, magazines, or ammunition to which it relates: 20
  - (g) all conditions that apply to it.
- (2) If the foreign protection officer is or may be one of a number of foreign protection officers deployed at the same time to protect the same protected person or persons, an authority may state the total quantity of firearms or the total quantity of any type of ammunition, or both, that may, under that authority, be carried by all of the named foreign protection officers on any shift. 25

### 38 Information required on permit

Every permit must state the following:

- (a) the full name of each foreign protection officer who may, while holding an authority under this subpart, carry and possess the firearms, pistols, restricted weapons, parts, magazines, or ammunition to which the permit relates: 30
- (b) the information specified in **section 37(1)(b) to (g)**.

### 39 Conditions of authority and permit

*General conditions* 35

- (1) It is a condition of every permit that a foreign protection officer must declare and produce any firearms, pistols, restricted weapons, parts, magazines, or

- ammunition in their possession to a Customs officer or constable on arrival in a Customs-controlled area.
- (2) It is a condition of every authority and permit that the foreign protection officer to whom it is granted must comply with the production and inspection requirements under **section 40**. 5
- (3) It is a condition of every authority and permit that the foreign protection officer to whom it is granted must remove from New Zealand the authorised items (or arrange for their removal) before or on the day the authority or permit expires.
- (4) **Subsection (3)** does not apply if an item is required or allowed to be retained in New Zealand by this Act or any other enactment. 10
- Discretionary conditions*
- (5) The Commissioner may impose any other conditions on an authority or a permit the Commissioner thinks fit.
- 40 Production and inspection**
- (1) A constable may at any time— 15
- (a) require a foreign protection officer to produce their authority or a permit for inspection; and
- (b) inspect the authority or permit produced.
- (2) A constable may at any time—
- (a) require a foreign protection officer to produce for inspection— 20
- (i) every firearm, pistol, restricted weapon, part, or magazine possessed or being carried by the foreign protection officer; and
- (ii) all ammunition possessed or being carried by the foreign protection officer; and
- (b) inspect— 25
- (i) every firearm, pistol, restricted weapon, part, or magazine produced; and
- (ii) all ammunition produced.
- (3) In a Customs-controlled area, the powers of a constable under this section may be exercised by a Customs officer. 30
- 41 Revocation of authority or permit: items to be removed from New Zealand**
- (1) If an authority or a permit is revoked, the foreign protection officer to whom it was granted must—
- (a) immediately deliver the items to which the authority or permit relates into the possession of a constable or a Customs officer; or 35
- (b) as soon as practicable, remove from New Zealand the items to which the authority or permit relates (or arrange for their removal).

- (2) **Subsection (1)(b)** does not apply if an item is required or allowed to be retained in New Zealand by this Act or any other enactment.

*Seizure of unlawful items*

- 42 Seizure of items for unlawful importation or unlawful carriage or possession** 5
- (1) If the importation of a firearm, pistol, restricted weapon, part, or magazine or ammunition by a foreign protection officer is not authorised by a permit (or any provision of any other Act), or breaches any condition of a permit,—
- (a) a Customs officer or constable may seize and detain it; and
- (b) the Arms Act 1983 applies to that importation. 10
- (2) If the carriage or possession of a firearm, pistol, restricted weapon, part, or magazine or ammunition by a foreign protection officer is not authorised by an authority (or any provision of any other Act), or breaches any condition of an authority,—
- (a) a constable may seize and detain it; and 15
- (b) the Arms Act 1983 applies to that carriage or possession.
- (3) Any items seized may (but need not) be returned to the foreign protection officer on the officer's departure from New Zealand.

**Part 3**

**Security areas** 20

Subpart 1—Securing places

- 43 Purpose of this subpart**
- The purpose of this subpart is—
- (a) to secure places and transport routes for the leaders' event period to prevent or respond to risks to security; and 25
- (b) in relation to transport routes, to provide for the timely and efficient travel of protected persons.

*Security areas*

- 44 Place closed is security area** 30
- A place closed under any of the following provisions is a **security area**:
- (a) **section 47** (planned closure of public place):
- (b) **section 48** (planned closure of privately owned place):
- (c) **section 49** (planned closure of road):
- (d) **section 50** (planned closure of marine area):

- (e) **section 51** (reactive closure of any place).

#### 45 **Meaning of closure of security area**

In this subpart, **closing** a place as a security area may entail (for example)—

- (a) blocking it off by any means:
- (b) preventing, by any means, people or traffic from entering or remaining in it: 5
- (c) indicating it is closed via any sign or traffic control device that may be appropriate.

#### 46 **Public notification of security area**

- (1) A planned closure under **section 47, 48, 49, or 50** must be publicly notified at least 24 hours before the closure commences. 10
- (2) A reactive closure under **section 51** may be publicly notified.
- (3) A closure decision referred to in this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 (and does not have to be presented to the House of Representatives under section 41 of that Act). 15

#### 47 **Planned closure of public place**

- (1) The Commissioner may close all, or part, of a public place for all or any part of a day or days during the leaders' event period if the Commissioner reasonably believes the closure is required to prevent a risk to security at, or near, a leaders' event or near a protected person. 20
- (2) The Commissioner may take into account, as a secondary reason for the closure, that the closure would ensure only accredited or permitted people enter or remain in the place.
- (3) Before closing the place, the Commissioner— 25
- (a) must consult any owner of the place or, if there is no owner, the local authority; and
- (b) may consult any persons the Commissioner considers are directly affected more than the public generally; and
- (c) need not consult anyone else. 30

#### 48 **Planned closure of privately owned place**

- (1) The Commissioner may close all, or part, of a privately owned place for all or any part of a day or days during the leaders' event period if the Commissioner reasonably believes the closure is required to prevent a risk to security at, or near, a leaders' event or near a protected person. 35

- (2) The Commissioner may take into account, as a secondary reason for the closure, that the closure would ensure only accredited or permitted people enter or remain in the place.
- (3) Before closing the place, the Commissioner—
- (a) must, to the extent practicable, consult the owner or owners of the place; and 5
  - (b) may consult any persons the Commissioner considers are directly affected more than the public generally; and
  - (c) need not consult anyone else.
- 49 Planned closure of road** 10
- (1) The Commissioner may close all, or part, of a road for all or any part of a day or days during the leaders' event period if the Commissioner reasonably believes the closure is required to prevent a risk to security at, or near, a leaders' event or near a protected person.
- (2) The Commissioner may take into account, as a secondary reason for the closure, that the closure would ensure only accredited or permitted people enter or remain in the road. 15
- (3) Before closing the road, the Commissioner—
- (a) must consult the road controlling authority; and
  - (b) may consult any persons the Commissioner considers are directly affected more than the public generally; and 20
  - (c) need not consult anyone else.
- 50 Planned closure of marine area**
- (1) The Commissioner may close all, or part, of a marine area for all or any part of a day or days during the leaders' event period if the Commissioner reasonably believes the closure is required to prevent a risk to security at, or near, a leaders' event or near a protected person. 25
- (2) The Commissioner may take into account, as a secondary reason for the closure, that the closure would ensure only accredited or permitted people enter or remain in the area. 30
- (3) Before closing the area, the Commissioner—
- (a) must consult the harbourmaster and the local authority; and
  - (b) may consult any persons the Commissioner considers are directly affected more than the public generally; and
  - (c) need not consult anyone else. 35

**51 Reactive closure of any place**

- (1) On a day during the leaders' event period, a constable may close any place, or any part of a place, for all or any part of that day (and any following days) if the constable reasonably believes the closure is required to prevent or respond to a risk to security at, or near, a leaders' event or near a protected person. 5
- (2) The constable may take into account, as a secondary reason for the closure, that the closure would ensure only accredited or permitted people enter or remain in the place.
- (3) A constable need not consult before deciding to close a place under this section. 10
- (4) The constable must be of (or above) the level of position of Senior Sergeant.

*Secure transport routes***52 Route closed is secure transport route**

A road or marine area (or any other place) closed under either of the following provisions is a **secure transport route**: 15

- (a) **section 56** (temporary closure of land transport route):
- (b) **section 57** (temporary closure of marine transport route).

**53 Meaning of closure of secure transport route**

In this subpart, closing a place as a secure transport route may entail (for example)— 20

- (a) blocking it off by any means:
- (b) preventing, by any means, people or traffic from entering or remaining in it:
- (c) indicating it is closed via any sign or traffic control device that may be appropriate: 25
- (d) providing a non-interference zone around a convoy by means of escorting vehicles or vessels.

**54 Meaning of temporarily**

In **sections 56 and 57**, **temporarily** means for any part of a day that is reasonably necessary in the circumstances. 30

**55 Public notification of secure transport route**

- (1) A closure under **section 56 or 57** may be publicly notified if the Commissioner thinks it is reasonable to do so, and to the extent appropriate.
- (2) A closure decision is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 (and does not have to be presented to the House of Representatives under section 41 of that Act). 35

**56 Temporary closure of land transport route**

- (1) During the leaders' event period, a constable may temporarily close to traffic any road, or part of a road, that is a route leading to or from an aerodrome, a leaders' event, or a protected person's accommodation if the constable reasonably believes the closure is required to ensure the security of protected persons while travelling to or from the aerodrome, event, or accommodation. 5
- (2) The constable may direct that either or both of the following also be temporarily closed if the constable reasonably believes the closure is required for the reason described in **subsection (1)**:
- (a) any road, bridge, level crossing, or pedestrian way that— 10
- (i) passes over or under the route; or
- (ii) is in the vicinity of the route:
- (b) any adjacent place that is in the vicinity of the route.
- (3) The constable may take into account, as a secondary reason for the closure, that the closure would enable protected persons to travel to or from the aerodrome, event, or accommodation in a timely and efficient way. 15
- (4) The constable—
- (a) may consult the road controlling authority; and
- (b) need not consult anyone else.

**57 Temporary closure of marine transport route** 20

- (1) During the leaders' event period, a constable may temporarily close to traffic any marine area, or part of a marine area, that is a route leading to or from an aerodrome, a leaders' event, or a protected person's accommodation if the constable reasonably believes the closure is required to ensure the security of protected persons while travelling to or from the aerodrome, event, or accommodation. 25
- (2) The constable may direct that either or both of the following also be temporarily closed if the constable reasonably believes the closure is required for the reason described in **subsection (1)**:
- (a) any bridge that passes over or is in the vicinity of the route: 30
- (b) any adjacent marine area or waterfront place that is in the vicinity of the route.
- (3) The constable may take into account, as a secondary reason for the closure, that the closure would enable protected persons to travel to or from the aerodrome, event, or accommodation in a timely and efficient way. 35
- (4) The constable—
- (a) may consult the local authority or harbourmaster; and
- (b) need not consult anyone else.

**58 Training to close secure transport route**

- (1) Constables may, from the commencement of this section, train in preparation for exercising the closure powers under **section 56 or 57**.
- (2) However, the training must entail the least disruption to the public possible in the circumstances. 5
- (3) In this section, **train** includes—
  - (a) testing equipment or processes; and
  - (b) practising activities.

*Constable's permission required to enter or remain in security area or secure transport route* 10**59 Constable's permission required to enter or remain in security area or secure transport route**

- (1) A person or thing may enter or remain in a security area or secure transport route only with the permission of a constable.
- (2) A member of APEC security staff must be treated as acting on a constable's behalf when giving permission to enter or remain in a security area or secure transport route. 15

*Effect of closure of security area or secure transport route***60 Effect of closure of security area or secure transport route**

- (1) Constables, and others permitted by constables, may enter, remain in, and use a security area or secure transport route that is not a home or marae for the purposes of this subpart. 20
- (2) Constables may enter a security area or secure transport route that is a home or marae only to search the home or marae in accordance with **section 66(2) to (5) or 86**. 25

*Effect of closure on rights of owners and occupiers of privately owned place or public place***61 Effect of closure on rights of owners and occupiers of privately owned place or public place**

- (1) Owners and occupiers of a privately owned place or public place closed under this subpart have the same legal rights to exclude or eject members of the public from the place as if this Act had not been passed. 30
- (2) Despite **subsection (1)**, owners and occupiers may not exclude or eject people who are permitted by a constable to enter or remain in the place.
- (3) Owners and occupiers do not have the right to permit a person to enter or remain in the place while it is closed under this subpart. 35

- ~~(4) Owners and occupiers may themselves be excluded, or removed, from the place while it is closed under this subpart.~~
- ~~(4) While the place is closed under this subpart, owners and occupiers of the place may themselves be—~~
- ~~(a) excluded (even if the place is their home or marae); or~~ 5
- ~~(b) removed (unless the place is a privately owned place and is their home or marae).~~

*Powers in security area and secure transport route*

**62 Power to prevent entry and power to remove**

- (1) A constable, or a member of APEC security staff, may at any time— 10
- (a) prevent a person or thing from entering a security area or secure transport route; and
- (b) remove a person or thing from a security area or secure transport route.
- (2) Removing a person or thing includes requiring the person or thing to vacate a security area or secure transport route. 15

**63 Power to require identification from people wanting to enter or remain**

- (1) A constable, or a member of APEC security staff, may require a person's accreditation or evidence of permission to enter or remain, reason to enter or remain, and personal details if the person is—
- (a) in a security area or secure transport route; or 20
- (b) seeking entry at an entrance to a security area or secure transport route.
- (2) When required by a constable or member of APEC security staff, a person must provide—
- (a) their accreditation or evidence of permission to enter or remain, their reason to enter or remain, and their personal details; and 25
- (b) satisfactory evidence of the matters described in **paragraph (a)**.

**64 Power to stop or limit any activity**

A constable, or a member of APEC security staff, may direct a person in, or seeking entry to, a security area or secure transport route to stop or limit any activity by the person that may cause a risk to security. 30

**65 Power to stop vehicles or vessels**

- (1) For the purpose of exercising any of the powers in this subpart, a constable may signal or require the driver of a vehicle or the person in charge of a vessel to stop their vehicle or vessel as soon as practicable if the driver or person is—
- (a) in a security area or secure transport route; or 35
- (b) seeking entry at an entrance to a security area or secure transport route.

- (2) The driver of a vehicle or the person in charge of a vessel that is stopped by a constable must remain stopped for as long as is reasonably necessary for the constable (or APEC security staff member) to exercise any of the powers in this subpart.  
Compare: 1990 No 98 s 80H(1), (2) 5
- 66 Power to search security area or secure transport route**
- (1) A constable may enter and search a security area or a secure transport route without warrant to search for any risk item or substance or other risk to security (except as provided in **subsection (2)**).
- (2) A home or a marae in a security area or a secure transport route may be entered and searched only— 10
- (a) with the consent of an occupier (~~and despite **section 61(3)**, owners and occupiers of the home or marae have the right to consent to a search~~); or
- (b) under a warrant issued under **subsection (3)** (~~and despite **section 61(3)**, owners and occupiers have the right to consent to a search by a constable under this section~~). 15
- (3) An issuing officer may, after an application by a constable in accordance with subpart 3 of Part 4 of the Search and Surveillance Act 2012, issue a warrant to enter and search the home or marae if the officer is satisfied there are reasonable grounds to believe that it is necessary to search that home or marae for a risk item or substance or other risk to security because— 20
- (a) its particular location in the security area or secure transport route poses a risk to security if it has not been searched for any risk item or substance or other risk to security; and
- (b) it would be a risk to security if there were a risk item or substance or other risk to security there. 25
- (4) Part 4 of the Search and Surveillance Act 2012, except subparts 2 and 3 ~~and 5~~, applies in respect of a power exercised under **subsection (1)**.
- (5) Part 4 of the Search and Surveillance Act 2012, except subparts ~~2 and 5~~, applies in respect of a power exercised under **subsection (2) (and (3))**. 30
- 67 Meaning of screening**
- (1) In **sections 68 to 71**, **screening** means the use of a device, a technique, or other means where that use does not require— 35
- (a) the touching of the person or thing (except the touching described in **section 71** in relation to a thing); or
- (b) in relation to a person, any action described in **section 71(1)(a)(iii) or (b)**.
- (2) Nothing in this definition of screening limits the use of a device, a technique, or other means in the course of performing a search.

- 68 Consent: screening and searching people and things**
- (1) Except as provided in this section, the powers to screen or search in **section 70** may be exercised,—
- (a) with respect to a person, only with the consent of the person:
  - (b) with respect to a thing that is attended, only with the consent of the person in charge of the thing. 5
- (2) A thing may be screened or searched without consent if it is unattended.
- (3) In a security area or secure transport route, a person or thing may be screened without consent using a dog that is trained for law enforcement purposes and that is under the control of its usual handler. 10
- (4) The power to screen or search may be exercised without consent if a constable has reasonable grounds to suspect that—
- (a) there is a risk to security; and
  - (b) it requires an immediate response.
- 69 No consent means power to prevent entry or remove** 15
- If a person does not consent to a screen or search under **section 70**, a constable or an APEC security staff member may exercise the power in **section 62** to—
- (a) prevent the person (or any relevant thing the person is in charge of) from entering a security area or secure transport route; or 20
  - (b) remove the person (or any relevant thing the person is in charge of) from a security area or secure transport route.
- 70 Screening and searching people and things**
- (1) The purposes of a screen or search under **subsection (2) or (3)** are any or all of the following (in order to prevent a risk to security): 25
- (a) to detect any risk item or substance or other risk to security:
  - (b) to confirm a person’s identity or accreditation or permission to enter or remain:
  - (c) to confirm a person’s reasons to enter or remain.
- Screening people: constables and APEC security staff* 30
- (2) A constable, or an APEC security staff member, may, for a purpose described in **subsection (1)**, screen a person—
- (a) in a security area or secure transport route; or
  - (b) if the person is seeking entry, at an entrance to a security area or secure transport route. 35

*Searching or screening things: constables and APEC security staff*

- (3) A constable, or an APEC security staff member, may, for a purpose described in **subsection (1)**, search or screen a thing—
- (a) at an entrance to a security area or secure transport route; or
  - (b) in a security area or secure transport route. 5

*Searching people: constables only*

- (4) A constable may, if the constable has reasonable cause to suspect there is any risk item or substance in or on a person that could cause a risk to security, undertake reasonable searches of the person (and any thing the person is in charge of)— 10
- (a) at an entrance to a security area or secure transport route; or
  - (b) in a security area or secure transport route.
- (5) Part 4 of the Search and Surveillance Act 2012, except subparts 2 and 3, applies in respect of a power exercised under this section. 15
- Compare: 1990 No 98 ss 80A(1), 80B(1), 80C(1)

**71 Searching and screening persons: requirements and incidental powers**

- (1) In respect of a search of a person under **section 70(4)**,—
- (a) the person must, if directed to do so by the constable,—
    - (i) remove, raise, lower, or open any outer clothing, including (but not limited to) any coat, jacket, jumper, cardigan, or similar article that the person is wearing to enable the search to be carried out, except where the person has no other clothing, or only underclothing, under the outer clothing: 20
    - (ii) remove any head covering (in an appropriately private place), gloves, footwear (including socks or stockings), belts, jewellery, or other accessories: 25
    - (iii) allow a constable to carry out a pat down search:
  - (b) if a search is made by means other than solely a mechanical or an electrical or electronic or other similar device, the person must be searched by a constable who is a suitable searcher in relation to the person being searched. 30
- (2) A person screened under **section 70(2)** must, if directed by the screener, do the actions described in **subsection (1)(a)(i) or (ii)**.
- (3) A power to screen or search includes the power to screen or search—
- (a) any thing carried by, or in the possession of, the person; and 35
  - (b) any outer clothing removed, raised, lowered, or opened for the purposes of the search or screen; and

- (c) any head covering, gloves, or footwear (including socks or stockings) or any other accessory removed for the purposes of the search or screen.
- (4) For the purposes of this section, a **pat down search** means a search of a clothed person in which the constable conducting the search (the **searcher**) may do all or any of the following: 5
- (a) run or pat the searcher's hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of the person being searched:
- (b) insert the searcher's hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched: 10
- (c) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following:
- (i) open the person's mouth:
- (ii) display the palms of the person's hands:
- (iii) display the soles of the person's feet: 15
- (iv) lift or rub the person's hair.

Compare: 1990 No 98 s 80G

## 72 Seizure of items found

- (1) If an item or a substance is found during a screen or search under **section 66 or 70** and the screener or searcher has reasonable grounds to suspect that the item or substance is a risk item or substance, the screener or searcher may seize and detain the item or substance. 20
- (2) Any seizure and detention may be maintained for only such time that the constable considers is necessary to prevent a risk to security.
- (3) Despite **subsection (2)**, if a seized item is required for the purpose of evidence in any prosecution under this or any other Act, the Commissioner may retain it in accordance with the Search and Surveillance Act 2012. 25
- (4) ~~Subparts 1, 4, 5, 6, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply, except subparts 2 and 3, applies in respect of a power exercised under this section.~~ 30

*Obligation to comply with requirement, condition, direction, or prohibition*

## 73 Obligation to comply with requirement, condition, direction, or prohibition

- (1) Every person must comply with all requirements, conditions, directions, or prohibitions given or made to, or imposed on, them under this subpart by a constable or member of APEC security staff. 35
- (2) Traffic and stationary vessels or vehicles in a secure transport route must, when signalled or required by a constable, vacate the route.

- (3) Traffic at an entrance to, or in, a security area or secure transport route must make way, by stopping if necessary, as soon as practicable with safety—
- (a) for a vehicle or vessel that is being escorted by a constable:
  - (b) if being signalled to make way by a siren, by a vehicle or vessel operating a blue or red beacon or blue and red beacons, or otherwise by a constable. 5
- (4) If a person does not comply with an obligation referred to in this section, a constable or an APEC security staff member may exercise the power in **section 62** to—
- (a) prevent the person (or any relevant thing the person is in charge of) from entering a security area or secure transport route; or 10
  - (b) remove the person (or any relevant thing the person is in charge of) from a security area or secure transport route.

### *Offences*

- 74 Offence to enter or remain in security area or secure transport route without permission** 15
- (1) No person may, intentionally and without reasonable excuse, attempt to enter or enter, or remain in, a security area or secure transport route—
- (a) knowing it is a security area or secure transport route; and
  - (b) knowing a constable (or APEC security staff member) has not permitted it. 20
- (2) A person who breaches **subsection (1)** commits an offence against this Act.
- 75 Offence to breach or fail to comply with requirement, condition, direction, or prohibition**
- (1) A person commits an offence against this Act if the person, intentionally and without reasonable excuse, and knowing they are in a security area or secure transport route, acts in breach of, or fails to comply with, any requirement, condition, direction, or prohibition given or made to, or imposed on, them under this subpart. 25
- (2) **Subsection (1)** does not apply to a requirement under **section 63**. 30
- 76 Offence to interfere with closure of security area or secure transport route**
- (1) No person may, intentionally and without reasonable excuse, interfere (or attempt to interfere) with any means of closing a security area or secure transport route knowing it is a security area or secure transport route.
- (2) A person who breaches **subsection (1)** commits an offence against this Act. 35

- (3) For the purposes of this section, **interference** could include, for example, moving a barrier or other means of blocking off the place or route, or defacing, removing, or otherwise interfering with any sign or traffic control device.

**77 Offence to fail to stop (or keep stopped) a vehicle or vessel**

- (1) No person may, intentionally and without reasonable excuse, and knowing they are in a security area or secure transport route, fail to— 5
- (a) stop a vehicle or vessel in a security area or secure transport route as soon as practicable when required to do so by a constable; or
- (b) keep the vehicle or vessel stopped for as long as is reasonably necessary for a constable (or APEC security staff member) to exercise any of the powers in this subpart. 10
- (2) A person who breaches **subsection (1)** commits an offence against this Act.

Subpart 2—Securing airspace

**78 Purpose of this subpart**

The purpose of this subpart is to secure airspace during APEC events and leaders' events in order to prevent potential and actual risks to security. 15

**79 Civil Aviation Act 1990 rules may be made about risk to security at APEC**

- (1) A reason to make rules in the public interest under section 29A(c) of the Civil Aviation Act 1990 is to—
- (a) prevent a risk to security by aircraft in airspace at, or near, an APEC event or a leaders' event; and 20
- (b) ensure only authorised aircraft enter the airspace.
- (2) Any recommendation from the Commissioner must be taken into account when making rules for this public interest.

**80 APEC security airspace: designation** 25

- (1) A designation of special use airspace may be made under, and in accordance with, rules made under sections 28, 29, 29A, and 30 of the Civil Aviation Act 1990 designating any portion of, or all, airspace over an area described in **subsection (2)**, and surrounding areas, as **APEC security airspace** to—
- (a) prevent a risk to security at, or near, an APEC event or a leaders' event; and 30
- (b) ensure only authorised aircraft enter the airspace.
- (2) The areas are any or all of the following:
- (a) an area in which a leaders' event will be held:
- (b) an area in which an APEC event will be held: 35
- (c) a security area:

- (d) an area in a secure transport route.
- (3) The designation must be for a specified period of time during the relevant APEC event or leaders' event.
- (4) When making a designation of APEC security airspace, the Director must take into account any recommendation from the Commissioner. 5
- (5) A designation of APEC security airspace may be publicly notified.

### **81 APEC security airspace: emergency rules**

The Director may, after taking into account any recommendation from the Commissioner, make rules under and in accordance with section 31 of the Civil Aviation Act 1990— 10

- (a) to prevent a risk to security by aircraft in airspace at, or near, an APEC event or a leaders' event; and
- (b) to ensure only authorised aircraft enter the airspace.

#### *Powers in APEC security airspace*

### **82 Aircraft without person on board: power to seize, etc** 15

- (1) If a constable has reasonable grounds to suspect that an unauthorised aircraft without a person on board is, has just been, or will be in APEC security airspace in breach of the airspace's designation or of a rule referred to in **section 79 or 81**, the constable may do all or any of the following to the aircraft or any remote control of the aircraft: 20

- (a) seize it;
- (b) detain it;
- (c) take control of it by any means, including electronic (for example, by W-ECM in accordance with **subpart 3**):
- (d) disable or destroy it, or prevent it from taking off, by any means, including— 25
  - (i) electronic (for example, by W-ECM in accordance with **subpart 3**); or
  - (ii) mechanical; or
  - (iii) physical (for example, by a net). 30

- (2) In this section and in **section 83**, **unauthorised aircraft** means an aircraft prohibited under, or that does not comply with, a designation of APEC security airspace or a rule referred to in **section 79 or 81**.

### **83 Aircraft with person on board: power to seize or detain**

If a constable has reasonable grounds to suspect that an unauthorised aircraft with a person on board is, has just been, or will be in APEC security airspace in breach of the airspace's designation or a rule referred to in **section 79 or 81**, 35

the constable may seize or detain it (or any remote control) to prevent its operation.

#### **84 Limits on detention or seizure power**

- (1) Any detention or seizure under **section 82 or 83** may be maintained for only such time that the constable considers is necessary to prevent a risk to security. 5
- (2) Despite **subsection (1)**, if a seized item is required for the purpose of evidence in any prosecution under this or any other Act, the Commissioner may retain it in accordance with the Search and Surveillance Act 2012.
- (3) ~~Subparts 1, 5, 6, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply, except subparts 2 and 3, applies in respect of a power of detention or seizure exercised under **section 82 or 83**.~~ 10

#### **85 Power to prohibit, impose conditions, or direct**

If a constable has reasonable grounds to suspect there is, has just been, or will be a breach of a designation of APEC security airspace or a rule referred to in **section 79 or 81**, the constable may do either or both of the following: 15

- (a) prohibit or impose conditions on any activity or on the operation of any relevant aircraft:
- (b) direct any person in, or near, APEC security airspace to stop or limit any activity that may cause a risk to security.

#### **86 Power to enter and search** 20

- (1) A constable who has reasonable grounds to suspect there is, or will be, an activity in APEC security airspace that constitutes a risk to security may enter and search without warrant any of the following places or things if the constable has reasonable grounds to suspect that the cause of that risk is in that place or thing: 25
  - (a) an aircraft:
  - (b) an aerodrome:
  - (c) a vehicle:
  - (d) a vessel:
  - (e) a building or place (including, without limitation, a home or marae). 30
- (2) A constable acting under **subsection (1)**—
  - (a) may take any of the actions described in **sections 82, 83, and 85**; and
  - (b) may require either or both of the following:
    - (i) the surrender of an item connected to the activity:
    - (ii) the production or surrender of any document or manual connected 35  
to the activity.

- (3) Part 4 of the Search and Surveillance Act 2012, except subparts 2 and 3, applies in respect of a power exercised under ~~subsection (1)~~ this section.

### **87 Power to require personal details, etc**

- (1) If a constable has reasonable grounds to suspect that an aircraft is, has just been, or will be in APEC security airspace in breach of the airspace's designation or a rule referred to in **section 79 or 81**, the constable may require a person who the constable reasonably believes is, has just been, or will be operating the aircraft,—
- (a) if the person is in fact operating the aircraft, to provide their personal details and, if the person is not the owner of the aircraft, the owner's personal details or such particulars within the person's knowledge as may lead to the identification of the owner; and
- (b) if the person is not in fact operating the aircraft, to provide—
- (i) the personal details (if known) of the owner and the person who is operating the aircraft; or
- (ii) those particulars within the person's knowledge that may lead to the identification of the owner and the person who is operating the aircraft.
- (2) If a constable has reasonable grounds to suspect that a person is, has just been, or will be breaching a designation of APEC security airspace or a rule referred to in **section 79 or 81**, the constable may require that person to provide their personal details.

### *Offences*

### **88 Offence to operate aircraft or do activity in breach of APEC security airspace or rule**

A person commits an offence against this Act if the person, intentionally and without reasonable excuse, operates an aircraft or does any activity in breach of—

- (a) a designation of APEC security airspace; or
- (b) a rule referred to in **section 79 or 81**.

### **89 Offence to breach or fail to comply with requirement, condition, direction, or prohibition**

A person commits an offence against this Act if the person, intentionally and without reasonable excuse, acts in breach of, or fails to comply with, any requirement, condition, direction, or prohibition given to, or imposed on, them under this subpart.

## Subpart 3—Securing radio spectrum

**90 Purpose of this subpart**

The purpose of this subpart is to authorise the use of W-ECMs during APEC events and leaders' events to counter potential and actual risks to security.

*Authorisation of W-ECM use* 5

**91 Consultation requirements: Commissioner**

Before authorising W-ECM use, the Commissioner must consult—

- (a) the Radiocommunications Secretary; and
- (b) if the proposed user will act for a foreign security agency, the Secretary of Foreign Affairs and Trade. 10

**92 Authorisation of W-ECM use**

- (1) The Commissioner may authorise a planned or reactive use of a specified W-ECM or class of W-ECMs by a constable or person acting for a foreign security agency.
- (2) The authorisation must be consistent with, and for the purpose of, this subpart. 15
- (3) The authorisation may authorise,—
  - (a) in relation to a leaders' event, use for a specified period of time during the leaders' event period in a specified location that is at, or adjacent to, that event; or
  - (b) in relation to an APEC event, use for a specified period of time during an APEC event in a specified location that is at, or adjacent to, that event; or 20
  - (c) use in testing for the purposes of an authorisation under **paragraph (a) or (b)**, for a specified period of time in a specified location.
- (4) The **specified period of time** must be the minimum time required to meet the purpose of this subpart. 25
- (5) The **specified location** may be in any or all of the following:
  - (a) a security area:
  - (b) areas adjacent to a security area:
  - (c) APEC security airspace: 30
  - (d) a secure transport route:
  - (e) areas adjacent to a secure transport route:
  - (f) areas where a protected person is, or is about to be, located:
  - (g) areas adjacent to an area where a protected person is, or is about to be, located: 35

- (h) in relation to an authorisation under **subsection (3)(c)**, an area appropriate for the particular authorised testing.
- (6) In this section and in **section 96**,—  
**planned use** has the meaning given in **section 93**  
**reactive use** has the meaning given in **section 94**. 5
- 93 Planned use**  
Authorising a planned use allows W-ECMs to be used in a planned response to radiocommunications in a planned range of frequencies.
- 94 Reactive use**  
Authorising a reactive use allows W-ECMs to be available to be used to react and respond to a certain type of radiocommunications as necessary. 10
- 95 Supply, importation, and exportation**  
An authorisation of the use of a W-ECM also authorises—  
(a) its supply and any importation of it (whether before or during the authorised time period); and 15  
(b) its exportation (whether before or after the expiry of this Act).
- 96 Conditions of authorisation**  
*General conditions*
- (1) The following conditions are imposed on all authorisations:  
*Secure storage and transportation* 20  
(a) the authorised W-ECM user must store and transport an authorised W-ECM securely:  
*Secure disposal*  
(b) the authorised W-ECM user must securely dismantle or dispose of, or export, an authorised W-ECM at the end of the authorisation: 25  
*Secure storage of information*  
(c) the authorised W-ECM user must securely store any information received via a W-ECM and protect it by such security safeguards as it is reasonable in the circumstances to take:  
*Secure disposal of information* 30  
(d) the authorised W-ECM user must securely dispose of ~~that~~ information received via a W-ECM as soon as it is no longer required for the purposes of this Act or as evidential material in relation to any offence punishable by imprisonment:

*Alternative arrangements for existing service*

- (e) the authorised W-ECM user must make any alternative arrangements required by the Commissioner relating to an existing service that may be affected by the authorisation:

*Planned use: notification of affected persons* 5

- (f) if required by the Commissioner, the authorised W-ECM user must notify, no less than 1 week before a planned use, the providers of existing services that may be affected by the authorisation:

*Reactive use: reporting after use*

- (g) within 24 hours of any reactive use, the authorised W-ECM user must report to the Commissioner and to the Radiocommunications Secretary detailing the W-ECM use; the reason, duration, and location of the W-ECM use; the frequencies affected; and, if known, the effect on providers of any existing service. 10

*Discretionary conditions* 15

- (2) The Commissioner may impose any other conditions on an authority the Commissioner thinks fit.
- (3) In this section, **existing service** means any relevant—
- (a) radio navigation service; or
- (b) radio service essential to the protection of life and property; or 20
- (c) service authorised to be operated under existing spectrum licences and radio licences.
- (4) In this section, the following terms have the same meaning as they have in the Radiocommunications Act 1989: **general user spectrum licence**; **radio licence**; **radio navigation service**; **radio service essential to the protection of life and property**; **spectrum licence**. 25

**96A Admissibility of evidential material**

- (1) **Subsection (2)** applies if, in the course of lawfully using a W-ECM in accordance with **section 97**, an authorised W-ECM user obtains evidential material in relation to any offence punishable by imprisonment. 30
- (2) The evidential material referred to in **subsection (1)** is not inadmissible in criminal proceedings by reason only that the use of the W-ECM was authorised under this Act and not in relation to that offence.

*Powers to use authorised W-ECM***97 Powers to use authorised W-ECM** 35

- (1) An authorised W-ECM user may do the following with an authorised W-ECM in relation to a radiocommunication for the purpose of, and in accordance with, this subpart:

- (a) use the W-ECM to detect, intercept, transmit, retransmit (with or without modification), disable, disrupt, or interfere with the radiocommunication; and
- (b) use any information derived from the radiocommunication.

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**Examples of uses of W-ECM**

- Locating the transmitter (remote control) of a drone by detecting and tracking the radiocommunications between the transmitter and the drone.
- Identifying the type of transmitter or receiver of radiocommunications.
- Jamming or distorting radiocommunications between a remote control and a suspected bomb so the bomb does not detonate.
- Deceiving the receiving drone so that radiocommunicated instructions from a remote control are ineffective or overridden.

- (2) **Subsection (1)** does not authorise the interception of any private communication within the meaning of section 216A of the Crimes Act 1961.
- (2) Except as provided in **subsection (3)**, an authorised W-ECM user must not disclose a radiocommunication, or information derived from it, that is—
- (a) a private communication (within the meaning given in section 216A of the Crimes Act 1961); or
- (b) personal information (within the meaning given in section 2(1) of the Privacy Act 1993).
- (3) Unless authorised by another Act or required for the purposes of exercising a power or for a prosecution under this Act, a disclosure may only be made to—
- (a) another authorised W-ECM user for use in accordance with **subsection (1)**; or
- (b) the Commissioner or the Radiocommunications Secretary for the purposes of **section 96(1)(g)**.

## Part 4

### Offences, appeals, general provisions about powers, immunities, and related amendments, etc

#### Subpart 1—Offences

#### 98 General penalty for offences

A person who commits an offence against this Act is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.

## Subpart 2—Appeals

### 99 Appeal to District Court

- (1) A person may appeal to the District Court against a specified decision made under this Act if—
- (a) the person is directly affected by the decision more than the public generally; or 5
  - (b) in respect of a thing that is the subject of the decision, the person is the owner of the thing or was the person in charge of the thing at the time of the decision; or
  - (c) in respect of an aircraft that is the subject of the decision, the person is the aircraft's owner or was the operator or person in charge of the aircraft at the time of the decision. 10
- (2) The court may confirm, reverse, or modify the specified decision.
- (3) In this section, a **specified decision** is a decision—
- (a) to seize and detain an item under **section 42**: 15
  - (b) to seize and detain an item or a substance under **section 72**:
  - (c) to seize, detain, or require the surrender of an item under **section 82, 83, or 86**:
  - (d) to take control of an aircraft, disable or destroy an aircraft, or prevent an aircraft from taking off under **section 82**. 20

Compare: 1990 No 98 s 66(1), (2), (5)

### 100 Consequences of appeal to District Court

If an appeal to the District Court is lodged under **section 99**, pending the determination of the appeal,—

- (a) every decision appealed against continues in force; and 25
- (b) no person is excused from complying with any of the provisions of this Act on the ground that an appeal is pending.

Compare: 1990 No 98 s 66(3), (4)

### 101 Appeal to High Court on question of law

- (1) A party to an appeal under **section 99** may appeal to the High Court on a question of law. 30
- (2) The High Court Rules 2016 and sections 126 to 130 of the District Court Act 2016, with all necessary modifications, apply to an appeal under **subsection (1)** as if it were an appeal under section 124 of that Act.

Compare: 1990 No 98 s 69

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**102 Further appeal to Court of Appeal**

- (1) A party to an appeal on a question of law under **section 101** may appeal to the Court of Appeal on that question of law—
- (a) with the leave of the High Court; or
  - (b) if the High Court refuses leave, with special leave of the Court of Appeal. 5
- (2) The Court of Appeal may make any order or determination it thinks fit in an appeal under **subsection (1)**.
- (3) The decision of the Court of Appeal is final—
- (a) on an appeal under this section: 10
  - (b) on an application for special leave to appeal to the court.
- (4) Except as provided in this section, any appeal must be made in accordance with the rules of court.

Compare: 1990 No 98 s 70

Subpart 3—Limitation on delegation by Commissioner 15

**103 Limitation on delegation by Commissioner**

- (1) Despite section 17 of the Policing Act 2008, the Commissioner may not delegate the power to make a decision under **subpart 3 of Part 2 or subpart 3 of Part 3** except to—
- (a) a Deputy Commissioner; or 20
  - (b) a Police employee who is of the level of position of Deputy Commissioner.
- (2) Despite section 17 of the Policing Act 2008, the Commissioner may not delegate the power to make a decision under **section 47, 48, 49, or 50** except to a Police employee who is of (or above) the level of position of Superintendent. 25

Subpart 4—General provisions about powers

**104 Application of this subpart**

This subpart applies in any circumstances where the general provisions relating to the exercise of powers are—

- (a) not set out in another Act (for example, the Search and Surveillance Act 2012); or 30
- (b) do not apply in the circumstances of the particular exercise of the power.

**105 Identification on request**

A person who exercises any power under this Act must, on the request of any person affected by the exercise of the power,— 35

- (a) identify themselves either by name or by unique identifier; and

- (b) state the name of this Act (as the enactment under which the power is exercised); and
- (c) if not a constable in Police uniform, produce evidence of their identity.

#### **106 Power to use reasonable force**

The powers given in this Act include the power to use reasonable force against people or things if required. 5

#### **107 Power to request assistance and to use aids**

Every power given by this Act authorises the person exercising it to do any or all of the following for the purposes of exercising the power:

- (a) request any person to assist: 10
- (b) bring and use in or on a place, vehicle, vessel, or other thing any equipment, or use any equipment found on the place, vehicle, or other thing, and to extract any electricity from the place, vehicle, vessel, or other thing to operate the equipment that it is reasonable to use in the circumstances: 15
- (c) bring and use in or on a place, vehicle, vessel, or other thing a dog that is trained for law enforcement purposes and that is under the control of its usual handler.

#### **108 Powers of people called to assist**

- (1) Every person called on to assist a person exercising a power given by this Act is subject to the control of the person with overall responsibility for exercising that power. 20
- (2) The person exercising a power given by this Act must provide to an assistant who is not a constable all supervision that is reasonable in the circumstances.
- (3) Every person called on to assist may, for the purposes of assisting the person exercising the power,— 25
  - (a) bring and use in or on a place, vehicle, vessel, or other thing any equipment, or use any equipment found on the place, vehicle, or other thing, and to extract any electricity from the place, vehicle, vessel, or other thing to operate the equipment that it is reasonable to use in the circumstances: 30
  - (b) to bring and use in or on a place, vehicle, vessel, or other thing a dog that is trained for law enforcement purposes and that is under the control of its usual handler.

## Subpart 5—Exercise of power does not prevent other action or exercise of other power

### 109 Exercise of power does not prevent other action or exercise of other power

The exercise of any power given by this Act does not prevent a constable or any other person—

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- (a) from exercising any other power under this Act or any other enactment; or
- (b) from taking any further action against a person under this Act or any other enactment.

## Subpart 6—Immunities

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### 110 Application of this subpart

This subpart applies in any circumstances where immunities relating to powers, functions, or duties under this Act are—

- (a) not set out in another Act (for example, the State Sector Act 1988 or the Search and Surveillance Act 2012); or
- (b) do not apply in the circumstances of the particular exercise of the power or the performance of the particular function or duty.

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### 111 Immunities

- (1) Every person is immune from civil and criminal liability for good faith actions or omissions in pursuance or intended pursuance of the person's duties, functions, or powers under this Act if—

20

- (a) the actions or omissions are reasonable; and
- (b) the person believes on reasonable grounds that the preconditions for the performance or exercise of the duty, function, or power have been satisfied.

25

- (2) Every person is immune from civil and criminal liability for good faith and reasonable actions or omissions to assist another with the other's pursuance or intended pursuance of duties, functions, or powers under this Act.

- (3) This section is subject to **section 115**.

- (4) In any civil proceeding in which a person asserts that they have an immunity under this section, the onus is on them to prove those facts necessary to establish the basis of the claim.

30

Compare: 2012 No 24 s 166

**112 Immunity of the Crown**

- (1) If any person is immune from civil liability under **section 111** in respect of anything done or omitted to be done, the Crown is also immune from civil liability in tort in respect of that person's conduct.
- (2) For the purposes of this section, the **Crown** includes Crown entities. 5
- Compare: 2012 No 24 s 167

**113 Immunities of issuing officer**

An issuing officer who is not a Judge has the same immunities as a District Court Judge.

Compare: 2012 No 24 s 164 10

## Subpart 7—Compensation

**114 No entitlement to compensation**

- (1) Except as provided in **section 115**, no person is entitled to compensation or any other remedy for good faith and reasonable actions and or omissions by constables or others acting in accordance with pursuance or intended pursuance of their duties, functions, or powers under this Act. 15
- (2) No compensation or other remedy is owing by the Commissioner, the Radio-communications Secretary, an authorised W-ECM user, or any other person (for example, the holder of a radio licence under the Radiocommunications Act 1989) for good faith and reasonable actions or omissions in accordance with pursuance or intended pursuance of the person's duties, functions, or powers under subpart 3 of Part 3. 20

**115 Compensation for property damaged or destroyed**

- (1) The Commissioner must pay, out of money appropriated by Parliament for the purpose, reasonable compensation for any property that is damaged or destroyed by a constable (or any person assisting a constable) when closing a security area or secure transport route under **subpart 1 of Part 3.** 25
- (2) Compensation is not payable—
- (a) to a person who caused or contributed to a risk to security; or
  - (b) in relation to any property seized or detained under this Act. 30
- (3) A court of competent jurisdiction may determine any dispute about compensation under this section.

## Subpart 8—Public notification

**116 Public notification**

- (1) If a provision of this Act requires a decision to be **publicly notified**, the Commissioner must ensure that— 35

- (a) a notice is published in the *Gazette* stating that the relevant decision has been made and giving details of where it is published; and
- (b) the decision—
- (i) is published on an Internet site maintained by or on behalf of the Commissioner; and 5
- (ii) is, as far as practicable, able to be accessed at, or downloaded from, the Internet site at all times.
- (2) The Commissioner may also notify the public by means of a newspaper circulating in the area affected by the decision, any appropriate Internet site, radio or television, or any sign or traffic control device that may be appropriate. 10
- (3) If a provision of this Act gives a discretion to publicly notify, the Commissioner may use any of the notification methods described in **subsections (1) and (2)**.
- (4) A failure to comply with a requirement to publicly notify does not affect a decision's validity. 15

#### Subpart 9—Failure to consult does not affect decision's validity

##### 117 Failure to consult does not affect decision's validity

A failure to comply with a requirement to consult does not affect a decision's validity.

#### Subpart 10—Related and consequential amendments 20

##### *Related amendments*

##### 118 Arms Act 1983 amended

- (1) This section amends the Arms Act 1983.
- (2) After section 3, insert:

##### 3AA Application of this Act during APEC 2021 25

- (1) Nothing in this Act (or the Arms Regulations 1992) applies to the carriage or possession of specified weapons by foreign protection officers in accordance with an authority granted under **subpart 3 of Part 2** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**, if the carriage or possession is in accordance with that authority. 30
- (2) Nothing in this Act (or the Arms Regulations 1992) applies to the importation of specified weapons by foreign protection officers in accordance with a permit granted under **subpart 3 of Part 2** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**, if the importation is in accordance with that permit.

**119 Civil Aviation Act 1990 amended**

- (1) This section amends the Civil Aviation Act 1990.
- (2) After section 4, insert:

**5 Application of this Act during APEC 2021**

For special use airspace in connection with APEC 2021, *see* **subpart 2 of Part 3** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**. 5

**120 Crimes Act 1961 amended**

- (1) This section amends the Crimes Act 1961.
- (2) After section 216B(2)(b)(iii), insert:

(iv) **subpart 3 of Part 3** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**. 10

- (3) After section 216D(2), insert:

(3) Subsection (1) does not apply to the use, supply, or importation of a W-ECM in accordance with **subpart 3 of Part 3** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**. 15

**121 Customs and Excise Act 2018 amended**

- (1) This section amends the Customs and Excise Act 2018.
- (2) After section 8, insert:

**8A Application of this Act to certain items during APEC 2021**

For the importation and exportation of specified weapons and W-ECMs during APEC 2021, *see* **subpart 3 of Part 2 and subpart 3 of Part 3** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**. 20

**122 Defence Act 1990 amended**

- (1) This section amends the Defence Act 1990.
- (2) After section 4, insert: 25

**4A APEC 2021**

For the Commissioner of Police's power to authorise a member of the Armed Forces to assist the Police during APEC 2021, *see* **subpart 1 of Part 2** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**.

**123 Independent Police Conduct Authority Act 1988 amended** 30

- (1) This section amends the Independent Police Conduct Authority Act 1988.
- (2) After section 2, insert:

- 2A Member of Armed Forces—assisting authorised to assist Police during APEC 2021 must be treated as Police employee for purposes of this Act**
- A member of the Armed Forces—~~assisting authorised~~ (under **subpart 1 of Part 2** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**) to ~~assist~~ Police during APEC 2021 must be treated as if they were a Police employee for the purposes of this Act. ~~See also subpart 1 of Part 2 of the Asia-Pacific Economic Cooperation (APEC 2021) Act 2019.~~ 5
- 124 Land Transport (Road User) Rule 2004 amended**
- (1) This section amends the Land Transport (Road User) Rule 2004.
- (2) After rule 5.1(3)(a), insert: 10
- (aa) the vehicle was being used by a constable or an APEC security staff member to convey or accompany a protected person travelling on a secure transport route (or by a constable training to do so) in accordance with **subpart 1 of Part 3** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**; or 15
- 125 Maritime Transport Act 1994 amended**
- (1) This section amends the Maritime Transport Act 1994.
- (2) After section 4, insert:
- 4AA Application of this Act during APEC 2021**
- For the power to close marine areas in connection with APEC 2021, *see sections 50, 51, and 57* of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**. 20
- 126 Policing Act 2008 amended**
- (1) This section amends the Policing Act 2008.
- (2) In section 4, definition of **Police uniform**, after “means”, insert “, in addition to a Police uniform approved under **section 23(1A)**,”. 25
- (3) In section 4, insert as subsection (2):
- (2) A reference to the term constable must be read as including a reference to a member of the Armed Forces authorised to have the powers of a constable under **subpart 1 of Part 2** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**. 30
- (4) After section 6, insert:
- 6A APEC 2021**
- For the Commissioner’s powers to authorise Armed Forces members and APEC security staff to assist the Police during APEC 2021, *see subparts 1 and 2 of Part 2* of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**. 35

(5) After section 21, insert:

**21A Member of Armed Forces—~~assisting~~ authorised to assist Police during APEC 2021, and member of APEC security staff, must be treated as Police employee for the purposes of sections 20 and 21**

A member of the Armed Forces—~~assisting~~ authorised (under **subpart 1 of Part 2** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**) to ~~assist~~ Police during APEC 2021, and a member of APEC security staff, must be treated as if they were a Police employee for the purposes of sections 20 and 21. ~~See also subparts 1 and 2 of Part 2 of the Asia-Pacific Economic Cooperation (APEC 2021) Act 2019.~~

(6) After section 23(1), insert—

(1A) The Commissioner may approve an Australian Police uniform (when worn by a constable who is also a member of the Australian Police) as a Police uniform for the purposes of APEC 2021 (within the meaning given in the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**).

(7) After section 35(2), insert:

(3) For the power to close roads in connection with APEC 2021, *see* **sections 49, 51, and 56** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**.

**127 Radiocommunications Act 1989 amended**

(1) This section amends the Radiocommunications Act 1989.

(2) After section 1, insert:

**1A Application of this Act during APEC 2021**

Nothing in this Act applies to the use, supply, importation, or exportation of W-ECMs in accordance with **subpart 3 of Part 3** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**.

**128 Visiting Forces Act 2004 amended**

(1) This section amends the Visiting Forces Act 2004.

(2) After section 5, insert:

**5A Application of this Act during APEC 2021**

~~Nothing in this Act applies to the carriage, possession, or importation of specified weapons by foreign protection officers in accordance with **subpart 3 of Part 2** of the Asia-Pacific Economic Cooperation (APEC 2021) Act **2019**.~~

(1) Nothing in this Act applies to actions or omissions by a member of a visiting force who is acting for the Government of an APEC economy or an international organisation at, or in relation to, an APEC event or a leaders' event.

- (2) Terms used in this section that are defined in the Asia-Pacific Economic Cooperation (APEC 2021) Act 2019 have the meanings given in that Act.

*Consequential amendment*

**129 Consequential amendment**

Amend the enactment specified in **the Schedule** as set out in that schedule. 5

## Schedule Consequential amendment

s 129

### Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, insert in its appropriate alphabetical order:

5

Asia-Pacific Economic Cooperation (APEC 2021) Act <b>2019</b>	<b>66(1)</b>	Constable may search a security area or a secure transport route without warrant	Subparts 1 and 4 to 10
	<b>66(2) (and (3))</b>	Constable may search a home or a marae in a security area or a secure transport route with warrant	Subparts 1 and 3 to 10
	<b>70</b>	APEC security staff and constable may screen, and constable may search, person or thing	Subparts 1 and 4 to 10
	<b>72</b>	Constable may seize certain things found during search	Subparts 1; <del>and 4 to, 5, 6, 7, 9, and 10</del>
	<b>82(1)</b>	Constable may seize aircraft or remote control	Subparts 1 <del>and 4 to, 5, 6, 7, 9, and 10</del>
	<b>83</b>	Constable may seize aircraft (or any remote control)	Subparts 1 <del>and 4 to, 5, 6, 7, 9, and 10</del>
	<b>86(1)</b>	Constable may enter and search a place without warrant to determine whether there is, or will be, an activity in APEC security airspace that constitutes a risk to security	Subparts 1 and 4 to 10
	<b>86(2)</b>	Constable may seize aircraft or remote control and may require the surrender of an item connected to certain activity or the production or surrender of any document or manual connected to the activity	Subparts 1 and 4 to 10

### Legislative history

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