

Brokering (Weapons and Related Items) Controls Bill

Government Bill

Explanatory note

General policy statement

This Bill establishes a regime to regulate the brokering of weapons and related items by New Zealanders and New Zealand entities.

Brokering involves negotiating, arranging or facilitating the international movement of arms and military equipment from one foreign country to another foreign country. It does not include imports, exports or internal movements of arms and military equipment within New Zealand, which are already regulated by the Arms Act 1983 and by the exports control regime under the Customs and Excise Act 1996. Weapons and related items covered are arms, military equipment, and civilian goods that may have a military end-use (**dual-use goods**) included on New Zealand's strategic goods list. The purpose of the Bill is to prevent New Zealanders and New Zealand entities from engaging in brokering where there is a risk of the movement of weapons or related items to illegitimate users or undesirable destinations.

The Bill will require all New Zealanders and New Zealand entities wishing to engage in brokering to register with the Secretary of Foreign Affairs and Trade (the **Secretary**) and obtain a permit for each brokering activity. The Secretary may grant permits if satisfied that the activity is consistent with New Zealand's international obligations and would not prejudice the security, defence, or international relations of New Zealand. The Secretary may impose conditions on the broker's registration or permit, for example, to ensure that the transaction is consistent with New Zealand's international obligations.

The regime will have extraterritorial effect and apply to New Zealanders and New Zealand entities operating abroad, given the globalised economy and the cross-border nature of brokering.

The Bill creates offences for engaging in conduct that contravenes its requirements, including engaging in brokering without being registered as a broker and having a permit, breaching the conditions of the registration or permit, failing to keep or

produce records or to answer questions, and providing false or misleading information in connection with a registration or permit.

The Bill will support New Zealand's commitments under the Arms Trade Treaty, which New Zealand ratified in 2014, and which requires all States Parties to take measures to regulate brokering taking place within their jurisdiction for conventional arms.

Departmental disclosure statement

The Ministry of Foreign Affairs and Trade is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2017&no=280>

Regulatory impact statement

The Ministry of Foreign Affairs and Trade produced a regulatory impact statement on 14 May 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://mfat.govt.nz/exportcontrols>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that certain provisions of the Bill (including those provisions that relate to registration of brokers and permits for brokering activity) come into force on the day after the Bill receives the Royal assent. Most of the provisions of the Bill come into force 120 days later. This staggered commencement will enable persons whose activities will be regulated under the Bill to become registered and to obtain permits for brokering activity before the rest of the Bill comes into force.

Part 1

Preliminary provisions

Clause 3 provides that the purpose of the Bill is to—

- regulate the brokering of weapons and related items; and
- support New Zealand's commitments under the Arms Trade Treaty.

Clause 4 is the interpretation clause. *Clause 4(1)* defines several terms used in the Bill. In particular, *clause 4(1)* defines—

- weapon or related item as meaning any goods that are specified in the strategic goods list. The strategic goods list is a list of weapons and related items that is maintained for the purpose of export controls under the Customs and Excise Act 1996:
- dual-use goods as meaning goods that may have a civilian use but that are intended for military end-use or that may have a military application and that fall within a specified category of the strategic goods list. (A person who carries out brokering activity in relation to dual-use goods may come within an exception to the prohibition on carrying out a brokering activity without being registered as a broker and having a permit for the activity.)

Clause 4(2) provides for the Secretary to specify, by notice in the *Gazette* after consultation with the Minister, categories or parts of the strategic goods list for the purpose of the definitions of dual-use goods and military end-use. The reason that *clause 4(2)* provides for a *Gazette* notice to specify the relevant categories of the list for the purposes of those definitions is because the strategic goods list is subject to regular review. If the categories were specified in the Bill itself, the resulting Act may have to be amended each time the strategic goods list is amended.

Clause 5(a) provides that brokering activity means arranging, facilitating, or negotiating a transaction that involves the international transfer of weapons or related items from a place outside of New Zealand to another place outside of New Zealand. For example, a person in New Zealand who sells weapons or related items that are located in a foreign country for delivery to a person in another foreign country would be carrying out brokering activity.

Clause 5(b) provides that a person who acts as an agent for a person involved in the transaction or who acts as an intermediary between 2 or more persons involved in the transaction would be carrying out brokering activity, as would a person who acquires or stores weapons or related items in a place outside of New Zealand for the purposes of such a transaction.

Clause 5(c) provides that services that are merely ancillary to brokering activity are not included in the definition of brokering activity. *Clause 5(c)* contains some examples of services that are merely ancillary.

Clause 6 defines equivalent overseas regime. An equivalent overseas regime is an overseas regime that regulates brokering activity or that imposes export controls in relation to weapons or related items and that the Secretary is satisfied is—

- substantially the same as the regime under the Bill; or
- sufficiently equivalent, in relation to the regulation of brokering activity in accordance with the Arms Trade Treaty, to the regime under the Bill.

The definition is relevant to an exception to the prohibition on carrying out a brokering activity without being registered as a broker and having a permit for the activity. A person who is located overseas and who complies with an equivalent overseas regime may come within the exception.

Clause 7 and *Schedule 1* provide for transitional, savings, and related provisions. (There are no such provisions at the time of the Bill's introduction but if the Bill is amended in the future, any transitional, savings, and related provisions relating to the amendments will be located in *Schedule 1*.)

Clause 8 provides that the Bill binds the Crown.

Part 2

Brokering activity, registration, and permits

Subpart 1—Main requirements and offences relating to brokering activity

Clause 9(1) provides that a person must not carry out a brokering activity unless the person is registered as a broker and has a permit for the activity.

Clause 9(2) to 9(4) sets out various exceptions to *clause 9(1)*. The prohibition in *clause 9(1)* does not apply—

- to a person who carries out a brokering activity in relation to a weapon or related item that is dual-use goods and who, at the time the person carries out the brokering activity, does not know (and cannot reasonably be expected to know) that the dual-use goods will or may be used for a prohibited use (*clause 9(2)*);
- to a person who carries out a brokering activity from a place outside of New Zealand and complies with an equivalent overseas regime (*clause 9(3)*);
- to anything done by a person, as an employee, for the person's employer or by a department or by a person on behalf of a department (*clause 9(4)*).

Clause 10 provides that it is an offence to carry out a brokering activity in breach of *clause 9* (that is, without being registered as a broker or without a permit for the activity in any case that does not come within an exception described in *clause 9(2), (3), or (4)*) if, at the time the person carries out the activity, the person knows or ought to know that the person needs to be registered and have a permit.

The penalty for the offence is, in the case of an individual, a term of imprisonment not exceeding 5 years or a fine not exceeding \$100,000 (or both) and, in any other case, a fine not exceeding \$1 million. If a court is satisfied that the offence occurred in the course of producing a commercial gain, and if the amount of the gain can be readily ascertained, the maximum amount of the fine is 3 times the value of that commercial gain (but only if that figure is higher than \$100,000, in the case of an individual, or higher than \$1 million, in any other case).

Clause 11 provides that a broker must comply with any conditions of the broker's registration and any conditions of a permit held by the broker.

Clause 12 provides that it is an offence for a broker to knowingly or recklessly carry out any brokering activity in breach of *clause 11*.

The penalty for the offence is, in the case of an individual, a term of imprisonment not exceeding 5 years or a fine not exceeding \$100,000 (or both) and, in any other

case, a fine not exceeding \$1 million. If a court is satisfied that the offence occurred in the course of producing a commercial gain, and if the amount of the gain can be readily ascertained, the maximum amount of the fine is 3 times the value of that commercial gain (but only if that figure is higher than \$100,000, in the case of an individual, or higher than \$1 million, in any other case).

Clause 13 provides that it is an offence for a broker to, without reasonable excuse and other than in the course of carrying out a brokering activity, breach *clause 11*. The penalty for the offence is, in the case of an individual, a term of imprisonment not exceeding 6 months or a fine not exceeding \$10,000 (or both) and, in any other case, a fine not exceeding \$20,000.

Subpart 2—Registration of brokers

Subpart 2 of Part 2 provides for the registration of brokers as follows:

- applications for registration are made to the Secretary of Foreign Affairs and Trade (the **Secretary**) (*clause 14*):
- the Secretary may register a person as a broker only if the Secretary is satisfied that the person is a fit and proper person (*clause 15*):
- if the Secretary refuses to register a person as a broker, the Secretary must give the person notice of the refusal (*clause 16*):
- the Secretary must enter details of every broker on a public register (*clause 17*):
- the Secretary may impose conditions on a broker's registration (*clause 18*):
- a broker's registration lasts a maximum of 3 years (although it can be renewed for periods of up to 3 years at a time) (*clause 19*):
- a broker's registration can be cancelled by the Secretary (if the Secretary is no longer satisfied that the broker is a fit and proper person) or surrendered by the broker and, if the registration is cancelled or surrendered, any permits held by the broker are automatically cancelled (*clause 20*).

Obligation to keep and produce records and to answer questions

Clause 21 obliges brokers to keep prescribed records for 5 years and, when required by the Secretary or a constable, to make the records available, to provide copies of the records, and to answer any questions in respect of the records.

Clause 22 provides that it is an offence to, without reasonable excuse, fail to comply with *clause 21*. The penalty for the offence is, in the case of an individual, a term of imprisonment not exceeding 6 months or a fine not exceeding \$10,000 (or both) and, in any other case, a fine not exceeding \$20,000.

Subpart 3—Permits for brokering activity

Subpart 3 of Part 2 provides for permits for brokering activity as follows:

- applications for permits are made to the Secretary (*clause 23*):

- the Secretary may give a broker a permit for a brokering activity if, having had regard to criteria prescribed under regulations and to any other matters that the Secretary considers appropriate, the Secretary is satisfied that the activity—
 - is consistent with New Zealand’s international obligations (for example, the activity does not breach any measures adopted by the United Nations Security Council); and
 - would not prejudice the security, defence, or international relations of New Zealand (*clause 24*):
- if the Secretary refuses to give a broker a permit, the Secretary must give the broker notice of the refusal (*clause 25*):
- a permit must specify a period, not longer than 3 years, for which the permit is valid (*clause 26*):
- the Secretary may impose conditions on a permit (*clause 27*):
- the Secretary may cancel a permit if no longer satisfied of the matters set out in *clause 24* (*clause 28*).

Subpart 4—Civil enforcement

Subpart 4 of Part 2 provides for the Attorney-General to take certain steps in relation to a breach or a potential breach of any of the prohibitions and requirements imposed by the Bill. The subpart applies to a person if the person has breached *clause 9, 11, 21, or 36(1)* or there are reasonable grounds to believe that the person is likely to breach any of those clauses.

Clause 30 provides that the Attorney-General may seek an enforceable undertaking from a person in connection with the person’s compliance with any of those provisions.

Clause 31 provides that, if the Attorney-General considers that a person who gave the enforceable undertaking has breached the undertaking, the Attorney-General may apply to the court for—

- an order directing the person to comply with any of the terms of the undertaking:
- an order directing the person to pay to the Crown an amount up to the amount of any financial benefit that the person has obtained directly or indirectly from, and that is reasonably attributable to, the breach:
- any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach.

Clause 32 provides that the court may grant an injunction restraining a person from breaching *clause 9, 11, 21, or 36(1)*.

Part 3

Miscellaneous provisions

Extraterritorial application

Clause 33 sets out the extraterritorial jurisdiction for offences under the Bill. This clause mirrors section 7A of the Crimes Act 1961.

Attorney-General's consent

Clause 34 provides that the Attorney-General must consent to any prosecution under the Bill. This is often the position for legislation that has an international dimension.

Applications for registration and permits

Clause 35 provides for matters relating to applications for registration as a broker or for a permit.

Clause 36 provides that a person must not, in relation to an application for registration or a permit, supply any information that the person knows or ought to know is materially false or misleading. A person who does so commits an offence. The penalty for the offence is, in the case of an individual, a term of imprisonment not exceeding 6 months or a fine not exceeding \$10,000 (or both) and, in any other case, a fine not exceeding \$20,000.

Appeals against decisions about registration and permits

Clause 37 provides for a person who has applied for registration as a broker or been registered as a broker, or who has applied for a permit or been given a permit, to appeal to the District Court against certain decisions by the Secretary.

Regulations and further miscellaneous provisions

Clause 38 provides for regulation-making powers.

Clause 39 enables the Secretary to disclose any information held by the Secretary to an overseas authority for the purpose of assisting the authority to carry out its functions related to, or involving,—

- the regulation or monitoring of brokering activity;
- the prevention, detection, investigation, prosecution, or punishment of offences that are, or if committed in New Zealand would be, offences under the Bill.

Clause 40 provides for the Secretary to keep and maintain a register of brokers on the Internet.

Clause 41 makes a consequential amendment to the Privacy Act 1993 to make the register of brokers a public register under that Act. This has the effect of applying the public register privacy principles set out in section 59 of that Act. Those principles govern the way in which personal information on public registers may be made available, among other things.

Hon Gerry Brownlee

Brokering (Weapons and Related Items) Controls Bill

Government Bill

Contents

	Page
1 Title	3
2 Commencement	3
Part 1	
Preliminary provisions	
3 Purpose	3
4 Interpretation	3
5 Meaning of brokering activity	5
6 Meaning of equivalent overseas regime	5
7 Transitional, savings, and related provisions	5
8 Act binds the Crown	5
Part 2	
Brokering activity, registration, and permits	
Subpart 1—Main requirements and offences relating to brokering activity	
9 Registration and permit required for brokering activity	6
10 Offence to carry out brokering activity without registration or permit	6
11 Broker must comply with conditions of registration and permit	7
12 Offence to breach conditions of registration or permit when carrying out brokering activity	7
13 Offence to breach conditions of registration or permit other than in course of carrying out brokering activity	7
Subpart 2—Registration of brokers	
14 Application for registration	8

Brokering (Weapons and Related Items) Controls Bill

15	Criteria for registration	8
16	Refusal to register broker	8
17	Registration of broker	8
18	Secretary may impose conditions on registration	9
19	Duration of registration	9
20	Cancellation or surrender of registration	9
	<i>Obligation to keep and produce records and answer questions</i>	
21	Brokers must keep and produce records and answer questions	10
22	Offence to fail to keep or produce records or answer questions	10
	Subpart 3—Permits for brokering activity	
23	Application for permit	10
24	Criteria for permit	10
25	Refusal to give permit	11
26	Duration of permit	11
27	Secretary may impose conditions on permit	11
28	Cancellation or surrender of permit	11
	Subpart 4—Civil enforcement	
29	Civil enforcement	11
30	Enforceable undertakings	12
31	Enforcement of undertakings	12
32	Injunctions	12
	Part 3	
	Miscellaneous provisions	
	<i>Extraterritorial application</i>	
33	Offences committed outside New Zealand	13
	<i>Attorney-General's consent</i>	
34	Attorney-General's consent required	14
	<i>Applications for registration and permits</i>	
35	Applications for registration and permits	14
36	False or misleading information	15
	<i>Appeals against decisions about registration and permits</i>	
37	Appeals against certain decisions to District Court	15
	<i>Regulations and further miscellaneous provisions</i>	
38	Regulation-making powers	16
39	Disclosure of information to overseas authority	16
40	Register of brokers	17
41	Consequential amendment	17
	Schedule 1	18
	Transitional, savings, and related provisions	

Schedule 2
Consequential amendment

19

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Brokering (Weapons and Related Items) Controls Act **2017**.

2 Commencement

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent: 5
- (a) **Part 1** (which contains preliminary provisions):
 - (b) **subparts 2 and 3 of Part 2** (which relate to registration of brokers and permits for brokering activity):
 - (c) **section 36** (which makes it an offence to provide false or misleading information in an application for registration or for a permit). 10
- (2) The rest of this Act comes into force on the day that is 120 days after the date on which it receives the Royal assent.

Part 1**Preliminary provisions**

15

3 Purpose

The purpose of this Act is to—

- (a) regulate the brokering of weapons and related items; and
- (b) support New Zealand's commitments under the Arms Trade Treaty.

4 Interpretation

20

- (1) In this Act, unless the context otherwise requires,—

Arms Trade Treaty means the Arms Trade Treaty done at New York on 28 March 2013

broker means a person who is registered as a broker under **subpart 2 of Part 2** 25

brokering activity has the meaning set out in **section 5**

department has the meaning given in section 2(1) of the Public Finance Act 1989

dual-use goods means goods—

- (a) that may have a civilian use but that are intended for military end-use or that may have a military application; and 30
- (b) that fall within a specified category

equivalent overseas regime has the meaning set out in **section 6**

goods—

- (a) has the meaning given in section 2(1) of the Customs and Excise Act 1996; but
- (b) also includes documents that are not otherwise goods within that meaning 5

military end-use means—

- (a) incorporation into military items that fall within a specified category; or
- (b) use, production, or testing of equipment and components for the development, production, or maintenance of military items that fall within a specified category; or 10
- (c) use of any unfinished products for the production of military items that fall within a specified category

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 15

permit means a permit given under **subpart 3 of Part 2**

prohibited use, in relation to dual-use goods, means any of the following uses:

- (a) the development, production, or deployment of nuclear, chemical, or biological weapons or their means of delivery: 20
- (b) military end-use:
- (c) use as parts or components of military items that fall within a category of the strategic goods list that is specified for the purposes of the definition of military end-use

Secretary means the Secretary of Foreign Affairs and Trade 25

specified category, in relation to the definition of **dual-use goods** or **military end-use**, means a category or part of the strategic goods list that is specified for the purpose of that definition in accordance with **subsection (2)**

strategic goods list means the list of all goods and classes of goods whose exportation is prohibited under section 56 of the Customs and Excise Act 1996 because they have or may have a strategic use (within the meaning of section 56(2A) of that Act) that the Secretary is required to maintain and to publish under section 56(2G) and (2H) of that Act 30

weapon or related item means any goods specified in the strategic goods list.

- (2) The Secretary may, by notice in the *Gazette* after consultation with the Minister, specify categories or parts of the strategic goods list for the purposes of the definitions of dual-use goods and military end-use. 35

- (3) A notice under **subsection (2)** is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

5 Meaning of brokering activity

In this Act, **brokering activity**— 5

- (a) means arranging, facilitating, or negotiating a transaction that involves the international transfer of weapons or related items from a place outside of New Zealand to another place outside of New Zealand; and
- (b) includes,—
 - (i) in relation to a transaction described in **paragraph (a)**, acting as an agent for a person involved in the transaction or as an intermediary between 2 or more persons involved in the transaction; and 10
 - (ii) acquiring or storing weapons or related items in a place outside of New Zealand for the purpose of transferring the weapons or related items to any person outside of New Zealand; but 15
- (c) does not include the provision of any service that is merely ancillary to an activity described in **paragraph (a) or (b)** (for example, the provision of administrative, customs brokering, or financial services in relation to weapons or related items). 20

6 Meaning of equivalent overseas regime

In this Act, an overseas regime that regulates brokering activity, or that imposes export controls in relation to weapons or related items, is an **equivalent overseas regime** if the Secretary is satisfied that the regime is—

- (a) substantially the same as the regime under this Act; or 25
- (b) sufficiently equivalent, in relation to the regulation of brokering activity in accordance with the Arms Trade Treaty, to the regime under this Act.

7 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms. 30

8 Act binds the Crown

This Act binds the Crown.

Part 2

Brokering activity, registration, and permits

Subpart 1—Main requirements and offences relating to brokering activity

- | | | |
|-----------|---|----|
| 9 | Registration and permit required for brokering activity | 5 |
| (1) | A person must not carry out a brokering activity unless the person— | |
| | (a) is registered as a broker; and | |
| | (b) has a permit for the activity. | |
| (2) | Subsection (1) does not apply to a person— | |
| | (a) who carries out a brokering activity in relation to a weapon or related item that is dual-use goods; and | 10 |
| | (b) who, at the time the person carries out the brokering activity, does not know (and cannot reasonably be expected to know) that the weapon or related item will or may be used for a prohibited use. | |
| (3) | Subsection (1) does not apply to a person— | 15 |
| | (a) who carries out a brokering activity from a place outside of New Zealand; and | |
| | (b) who complies with an equivalent overseas regime in relation to the brokering activity. | |
| (4) | Subsection (1) does not apply in relation to anything done— | 20 |
| | (a) by a person, as an employee, for the person’s employer; or | |
| | (b) by or on behalf of a department. | |
| (5) | It may be presumed, in the absence of any evidence to the contrary, that an exception described in subsection (2), (3), or (4) does not apply. | |
| 10 | Offence to carry out brokering activity without registration or permit | 25 |
| (1) | A person commits an offence if— | |
| | (a) the person carries out a brokering activity in breach of section 9 ; and | |
| | (b) at the time the person carries out the activity, the person knows or ought to know that the person must comply with section 9 . | |
| (2) | A person who commits an offence against subsection (1) is liable on conviction,— | 30 |
| | (a) in the case of an individual, to a term of imprisonment not exceeding 5 years or a fine not exceeding the amount described in subsection (3) , or both: | |
| | (b) in any other case, to a fine not exceeding the amount described in subsection (3) . | 35 |

- (3) The maximum amount of the fine is the greater of—
- (a) \$100,000 (in the case of an individual) or \$1 million (in any other case); and
 - (b) if a court is satisfied that the offence occurred in the course of producing a commercial gain, and if the value of that commercial gain can be readily ascertained, 3 times the value of that commercial gain. 5
- (4) The prosecutor need not assert, in a charging document relating to an offence against **subsection (1)**, that an exception described in **section 9(2), (3), or (4)** does not apply.
- 11 Broker must comply with conditions of registration and permit** 10
- A broker must comply with—
- (a) any conditions of the broker’s registration; and
 - (b) any conditions of a permit held by the broker.
- 12 Offence to breach conditions of registration or permit when carrying out brokering activity** 15
- (1) A broker who knowingly or recklessly carries out a brokering activity in breach of **section 11** commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 5 years or a fine not exceeding the amount described in **subsection (2)**, or both: 20
 - (b) in any other case, to a fine not exceeding the amount described in **subsection (2)**.
- (2) The maximum amount of the fine is the greater of—
- (a) \$100,000 (in the case of an individual) or \$1 million (in any other case); and 25
 - (b) if a court is satisfied that the offence occurred in the course of producing a commercial gain, and if the value of that commercial gain can be readily ascertained, 3 times the value of that commercial gain.
- 13 Offence to breach conditions of registration or permit other than in course of carrying out brokering activity** 30
- A broker who, without reasonable excuse and other than in the course of carrying out a brokering activity, breaches **section 11** commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or a fine not exceeding \$10,000, or both: 35
 - (b) in any other case, to a fine not exceeding \$20,000.

Subpart 2—Registration of brokers

14 Application for registration

- (1) A person may apply to the Secretary for registration as a broker.
- (2) The application must be made in accordance with **section 35**.

15 Criteria for registration

5

- (1) The Secretary may register a person as a broker only if the Secretary is satisfied that the person is a fit and proper person.
- (2) For the purpose of considering whether a person is a fit and proper person, the Secretary may take into account—
 - (a) any conviction for any offence punishable by imprisonment for 12 months or longer, whether or not—
 - (i) the conviction was in a New Zealand court; or
 - (ii) the offence was committed before the commencement of this Act; and
 - (b) if the person has been previously registered as a broker, whether the person breached a condition of that registration or whether that registration has been cancelled; and
 - (c) if the person has been given a permit under this Act, whether the person has breached a condition of that permit or whether that permit has been cancelled; and
 - (d) the financial position of the person; and
 - (e) whether the application for registration contains information that is false or misleading; and
 - (f) any other information and evidence (including in relation to any associate of the person) that may be relevant.
- (3) If the person is a body corporate, **subsection (2)(a), (b), and (c)** must be read as if it refers to the body corporate and its officers.
- (4) The Secretary may, for the purposes of **subsection (2)**,—
 - (a) seek and receive any information as the Secretary thinks fit; and
 - (b) consider information obtained from any source.

16 Refusal to register broker

If the Secretary refuses to register a person as a broker, the Secretary must give the person written notice of the refusal.

17 Registration of broker

If the Secretary approves an application for registration, the Secretary must, as soon as practicable,—

- (a) give the broker written notice specifying the date on which the registration takes effect and the duration of the registration; and
- (b) enter the following information on the public register:
 - (i) the broker’s full name and trading name:
 - (ii) the date of registration and the date of its expiry: 5
 - (iii) any other particulars that may be prescribed in regulations.

18 Secretary may impose conditions on registration

- (1) The Secretary may impose any conditions on a broker’s registration that are consistent with or for the purpose of—
 - (a) the effective administration of this Act: 10
 - (b) the security, defence, or international relations of New Zealand:
 - (c) New Zealand’s international obligations.
- (2) The Secretary may impose the conditions when registering the broker or at any other time.

19 Duration of registration 15

- (1) A broker’s registration is effective from the date of registration until the earliest of the following:
 - (a) the close of the day that is 3 years after the date of registration:
 - (b) the end of the period specified by the Secretary in the written notice under **section 17(a)**: 20
 - (c) the cancellation or surrender of the registration.
- (2) A registration may be renewed by paying the prescribed fee (if any) to the Secretary at any time during the period that the registration is effective.
- (3) On payment of the prescribed fee, the Secretary may renew the registration for a further period determined by the Secretary (not being longer than 3 years) unless the Secretary is no longer satisfied of the matters set out in **section 15**. 25

20 Cancellation or surrender of registration

- (1) The Secretary may, by written notice, cancel a broker’s registration if—
 - (a) the Secretary is no longer satisfied of the matters set out in **section 15**; or 30
 - (b) the broker breaches **section 9, 11, 21, or 36(1)**.
- (2) The cancellation of a broker’s registration takes effect on the date specified by the Secretary in the notice, which must be a date after the date of that notice.
- (3) A broker may surrender the broker’s registration by written notice to the Secretary. 35

- (4) The surrender takes effect on the date specified by the broker in the notice, which must be a date after the date of that notice.
- (5) If a broker's registration is cancelled or surrendered, any permit held by the broker under **subpart 3** is cancelled at the time that the cancellation or surrender takes effect. 5

Obligation to keep and produce records and answer questions

21 Brokers must keep and produce records and answer questions

- (1) A broker must keep any prescribed records for a period of at least 5 years after the end of the calendar year to which the records relate.
- (2) A broker must, when required,— 10
- (a) make the records available to the Secretary or a constable:
 - (b) provide copies of the records to the Secretary or a constable:
 - (c) answer any questions in respect of the records that are asked by the Secretary or a constable.

22 Offence to fail to keep or produce records or answer questions 15

A broker who, without reasonable excuse, fails to comply with **section 21** commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or a fine not exceeding \$10,000, or both:
- (b) in any other case, to a fine not exceeding \$20,000. 20

Subpart 3—Permits for brokering activity

23 Application for permit

- (1) A broker must apply to the Secretary for a permit to carry out a brokering activity.
- (2) The application may be for 1 or more transactions. 25
- (3) The application must be made in accordance with **section 35**.

24 Criteria for permit

- (1) The Secretary may give a broker a permit to carry out a brokering activity if, having regard to the prescribed criteria and to any other matters that the Secretary considers appropriate, the Secretary is satisfied that the activity— 30
- (a) is consistent with New Zealand's international obligations; and
 - (b) would not prejudice the security, defence, or international relations of New Zealand.
- (2) The Secretary may, for the purposes of this section,—
- (a) seek and receive any information as the Secretary thinks fit; and 35

- (b) consider information obtained from any source.

25 Refusal to give permit

If the Secretary refuses to give a broker a permit, the Secretary must give the broker notice of the refusal.

26 Duration of permit

5

- (1) A permit must specify the period, not longer than 3 years, for which the permit is effective.
- (2) The permit ceases to be effective on the earliest of the following:
- (a) the end of the period specified in the permit:
 - (b) the cancellation or surrender of the permit: 10
 - (c) the date on which the broker's registration ceases to be effective.

27 Secretary may impose conditions on permit

- (1) The Secretary may impose any conditions on a permit that are consistent with or for the purpose of—
- (a) the effective administration of this Act: 15
 - (b) the security, defence, or international relations of New Zealand:
 - (c) New Zealand's international obligations.
- (2) The Secretary may impose the conditions when giving the permit to the broker or at any other time.

28 Cancellation or surrender of permit

20

- (1) The Secretary may, by written notice, cancel a permit given under this subpart if—
- (a) the Secretary is no longer satisfied of the matters set out in **section 24**; or
 - (b) the broker breaches **section 9, 11, 21, or 36(1)**. 25
- (2) The cancellation takes effect on the date specified by the Secretary in the notice, which must be a date after the date of that notice.
- (3) A broker may surrender a permit by written notice to the Secretary.
- (4) The surrender takes effect on the date specified by the broker in the notice, which must be a date after the date of that notice. 30

Subpart 4—Civil enforcement

29 Civil enforcement

- (1) This subpart applies to a person if,—

- (a) without lawful justification or reasonable excuse, the person has breached **section 9, 11, 21, or 36(1)**; or
 - (b) there are reasonable grounds to believe that the person is likely to breach **section 9, 11, 21, or 36(1)**.
- (2) The Attorney-General may— 5
- (a) issue a formal warning to the person (in any prescribed manner and containing any prescribed information):
 - (b) accept an enforceable undertaking from the person under **section 30**:
 - (c) seek an order of the court under **section 31** against the person for breach of an enforceable undertaking: 10
 - (d) seek an injunction under **section 32** against the person.

Compare: 2009 No 35 ss 78, 79

30 Enforceable undertakings

- (1) The Attorney-General may accept a written undertaking given by a person in connection with the person's compliance with **section 9, 11, 21, or 36(1)**. 15
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Attorney-General.

Compare: 2009 No 35 s 81

31 Enforcement of undertakings

- (1) If the Attorney-General considers that a person who gave an undertaking under **section 30** has breached 1 or more of its terms, the Attorney-General may apply to the court for an order under **subsection (2)**. 20
- (2) The court may, if satisfied that a person has breached 1 or more of the terms of an enforceable undertaking, make any or all of the following orders:
 - (a) an order directing the person to comply with any of the terms of the undertaking: 25
 - (b) an order directing the person to pay to the Crown an amount up to the amount of any financial benefit that the person has obtained directly or indirectly from, and that is reasonably attributable to, the breach:
 - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach. 30

Compare: 2009 No 35 s 82

32 Injunctions

- (1) The court may grant an injunction restraining a person from breaching **section 9, 11, 21, or 36(1)**. 35
- (2) The injunction may be an interim one if the court thinks that is desirable, but the court must not—

- (a) require the Crown to give an undertaking as to damages as a condition of granting the interim injunction; or
- (b) take into account that the Crown is not required to give an undertaking as to damages.
- (3) The court may rescind or vary an injunction granted under this section. 5
- (4) **Subsections (1) and (2)** apply whether or not the person—
- (a) intends to engage again, or to continue to engage, in conduct that breaches **section 9, 11, 21, or 36(1)**;
- (b) has previously engaged in such conduct.
- (5) The powers in this section do not limit any other powers of the High Court relating to the granting of injunctions. 10
- Compare: 2007 No 7 s 44; 2009 No 35 ss 84, 87–89

Part 3

Miscellaneous provisions

Extraterritorial application 15

33 Offences committed outside New Zealand

- (1) Even if the acts or omissions alleged to constitute an offence against any of **sections 10, 12, 13, 22, and 36** occurred wholly outside New Zealand, proceedings may be brought for an offence under that section—
- (a) if the person to be charged— 20
- (i) is a New Zealand citizen; or
- (ii) is ordinarily resident in New Zealand; or
- (iii) has been found in New Zealand and has not been extradited; or
- (iv) is an entity incorporated or registered under the law of New Zealand; or 25
- (b) if any of the acts or omissions are alleged to have occurred on board—
- (i) a ship registered, or required to be registered, under the Ship Registration Act 1992; or
- (ii) a ship used as a ship of the New Zealand Defence Force; or
- (iii) an aircraft registered, or required to be registered, in New Zealand under the Civil Aviation Act 1990; or 30
- (iv) an aircraft for the time being used as an aircraft of the New Zealand Defence Force; or
- (v) an aircraft that is leased to a lessee whose principal place of business is in New Zealand, or who is a New Zealand citizen or a person ordinarily resident in New Zealand. 35

- (2) The following sections do not apply in respect of an offence against **section 10, 12, 13, 22, or 36**:
- (a) section 8 of the Crimes Act 1961 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand):
- (b) section 400 of the Crimes Act 1961 (which requires the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft). 5
- (3) Nothing in this section limits the application of **section 10, 12, 13, 22, or 36** in respect of—
- (a) acts or omissions that occurred wholly in New Zealand; or 10
- (b) the application of section 7 of the Crimes Act 1961 to the occurrence in New Zealand of—
- (i) an act or omission forming part of an offence; or
- (ii) an event necessary to the completion of an offence; or
- (c) the application of section 8A of the Crimes Act 1961. 15
- (4) For the purposes of this section, **ordinarily resident in New Zealand** has the same meaning as in section 4 of the Crimes Act 1961.

Attorney-General's consent

34 Attorney-General's consent required

- (1) No charging document may be filed against any person in relation to an offence under this Act unless the Attorney-General consents to the filing of the charging document. 20
- (2) A person alleged to have committed an offence may be arrested or a warrant for his or her arrest may be issued and executed, and he or she may be remanded in custody or on bail, even though the consent of the Attorney-General has not yet been obtained under **subsection (1)**, but no further or other proceedings may be taken until the consent has been obtained. 25

Applications for registration and permits

35 Applications for registration and permits

- (1) An application under **section 14 or 23** must— 30
- (a) be in the form approved by the Secretary for the purposes of that section; and
- (b) contain the information required by the form; and
- (c) be accompanied by any documents that the form requires; and
- (d) be accompanied by the fee (if any) prescribed by the regulations. 35

- (2) The Secretary may request an applicant to provide such additional information as the Secretary considers necessary to enable the Secretary to decide the application.
- (3) The Secretary may approve a form for the purposes of **section 14 or 23**.

36 False or misleading information 5

- (1) A person must not, in relation to an application for registration or a permit under this Act, supply any information that the person knows or ought to know is materially false or misleading.
- (2) A person who breaches **subsection (1)** commits an offence and is liable on conviction,— 10
 - (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or a fine not exceeding \$10,000, or both:
 - (b) in any other case, to a fine not exceeding \$20,000.

Appeals against decisions about registration and permits

37 Appeals against certain decisions to District Court 15

- (1) A person who has applied for registration or been registered under **subpart 2 of Part 2** may appeal to the District Court against any decision of the Secretary— 20
 - (a) to refuse to register the person as a broker:
 - (b) to impose a condition on the person’s registration:
 - (c) to cancel the person’s registration.
- (2) A broker who has applied for a permit or been given a permit under **subpart 3 of Part 2** may appeal to the District Court against any decision of the Secretary— 25
 - (a) to refuse to give the permit:
 - (b) to impose a condition on the permit:
 - (c) to cancel the permit.
- (3) An appeal under **subsection (1) or (2)** must be made within 30 days after the decision appealed against is given, or within any further period that the District Court may allow. 30
- (4) A decision against which an appeal is lodged continues in force unless the District Court orders otherwise.
- (5) An appeal under **subsection (1) or (2)** is by way of rehearing.

*Regulations and further miscellaneous provisions***38 Regulation-making powers**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for any or all of the following purposes:
- (a) prescribing fees or charges for applications under **sections 14 and 23**: 5
 - (b) prescribing particulars of brokers that must be entered on the public register under **section 17(b)**:
 - (c) prescribing the records to be kept under **section 21**:
 - (d) prescribing matters to which the Secretary must have regard when considering whether to give a permit under **section 24**: 10
 - (e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under **subsection (1)(a)** may—
- (a) make different provision for different cases on any differential basis:
 - (b) prescribe any of the following: 15
 - (i) the method by which the fees or charges are to be assessed:
 - (ii) the persons liable to pay the fees or charges:
 - (iii) when the fees or charges must be paid:
 - (iv) circumstances in which the fees or charges may be refunded, remitted, or waived (wholly or partly). 20

39 Disclosure of information to overseas authority

- (1) The Secretary may disclose any information held by the Secretary to an overseas authority for the purpose of assisting the authority to carry out its functions related to, or involving,—
- (a) the regulation or monitoring of brokering activity: 25
 - (b) the prevention, detection, investigation, prosecution, or punishment of offences that are, or if committed in New Zealand would be, offences under this Act.
- (2) Information may be disclosed under this section if—
- (a) the information is disclosed subject to conditions stating— 30
 - (i) the use that the overseas authority may make of the information; and
 - (ii) either—
 - (A) that the overseas authority must not disclose the information to any other agency, body, or person; or 35

- (B) that the overseas authority may disclose the information, or part of it, to a specified agency, body, or person subject to certain conditions; and
- (b) the Secretary makes and keeps a record of—
- (i) the information that was disclosed; and 5
 - (ii) the overseas authority or authorities to which it was disclosed; and
 - (iii) the conditions subject to which it was disclosed.
- (3) In this section, **overseas authority** means an overseas agency, body, or person.
- (4) This section does not prevent or limit any disclosure of information that is required or authorised by or under any law, or under any treaty, agreement, or arrangement concluded by the Government of New Zealand. 10
- 40 Register of brokers**
- (1) The Secretary must keep and maintain a register of brokers.
- (2) The Secretary must ensure that the register is available to the public on an Internet site maintained by or on behalf of the Secretary. 15
- (3) The register must show in relation to each registered broker—
- (a) the information described in **section 17(b)**; and
 - (b) a statement as to whether the broker’s registration is subject to any conditions.
- (4) Despite **subsection (3)(a)**, the Secretary may omit or remove any particular prescribed in regulations made under **section 17(b)(iii)** from a public register if— 20
- (a) the person requests the Secretary to do so on the basis that the particular is personal information; and
 - (b) the Secretary considers that the disclosure of the information on the public register would constitute an unreasonable interference with the privacy of any individual. 25
- 41 Consequential amendment**
- Amend the enactment specified in **Schedule 2** as set out in that schedule.

Schedule 1
Transitional, savings, and related provisions

s 7

Part 1
Provisions relating to this Act as enacted

5

There are no transitional, savings, or related provisions relating to this Act as enacted.

Schedule 2
Consequential amendment

s 41

Privacy Act 1993 (1993 No 28)

In Schedule 2, Part 1, after the item relating to the Births, Deaths, Marriages, and Relationships Registration Act 1995, insert: 5

Brokering (Weapons and Related Items) Control Act **2017** **Section 41**