

Counter-Terrorism Legislation Bill

Government Bill

Explanatory note

General policy statement

The Counter-Terrorism Legislation Bill strengthens New Zealand's counter-terrorism legislation to better prevent and respond to terrorism and associated activities. The overarching objective of New Zealand's counter-terrorism laws is to keep the public in New Zealand and other countries safe. It is critical that New Zealand's legislative framework supports the early management of risks and prevention of terrorist attacks and activities that support or enable terrorism. This Bill is introduced under Standing Order 267(1)(a). That Standing Order permits an omnibus Bill to amend more than 1 Act to be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The interrelated topic is counter terrorism. The single broad policy is to better prevent and respond to terrorism and associated activities by ensuring designation, offence, and control order provisions apply effectively to conduct that is, or that creates an unacceptable risk of, terrorism and associated activities.

The amendments in the Bill implement that single broad policy by amending the Terrorism Suppression Act 2002, the Search and Surveillance Act 2012, and the Terrorism Suppression (Control Orders) Act 2019, to—

- create new offences to—
 - criminalise travel to, from, or via New Zealand with the intention to carry out a specified offence in the Terrorism Suppression Act 2002:
 - criminalise planning or preparation for a terrorist act (and apply warrantless powers of entry, search, and surveillance to that offence):
 - more clearly criminalise weapons training or combat training for terrorist purposes:
- extend the terrorism finance offence framework to criminalise wider forms of material support for terrorist activities or organisations:

- update the definition of terrorist act to improve clarity:
- extend the control orders regime so that individuals who have completed a prison sentence for specified offences related to terrorism may be subject to the regime if they continue to present a real risk of engaging in terrorism-related activities:
- improve the workability of the Terrorism Suppression Act 2002 by ensuring that it applies effectively to conduct that is, or that creates an unacceptable risk of, terrorism and associated activities.

Terrorism and violent extremism have proven an enduring global threat over many years. The nature of terrorism and the associated threat continue to evolve—both internationally and domestically.

New Zealand agencies engage in a wide range of counter-terrorism activities to protect the safety, rights, and freedoms of New Zealanders and to contribute to the global counter-terrorism effort. These agencies need tools and clear legal authority to intervene to identify, disrupt, and prevent terrorist activities.

The amendments above provide agencies with a range of tools that reflect the evolving nature of terrorism and violent extremism. In doing so they are part of the Government's initial response to the Report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019. The Bill implements part of Recommendation 18 of that report. Recommendation 18 recommended, among other things, prioritising the creation of precursor terrorism offences in the Terrorism Suppression Act 2002.

This Bill is currently not intended to be divided, by select committee or committee of the whole House, into separate amendment Bills.

Departmental disclosure statement

The Ministry of Justice 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=2021&no=29>

Regulatory impact assessment

The Ministry of Justice produced 3 regulatory impact assessments on 13 November 2019, 24 November 2020, and 24 November 2020 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact assessments can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>

- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. The Act is to come into force on the day after the date of Royal assent.

Part 1 Amendments to Terrorism Suppression Act 2002

Principal Act

Clause 3 indicates *Part 1* amends the Terrorism Suppression Act 2002.

Purpose

Clause 4 amends section 3, which states the Act's purpose. *New section 3(b)(vii)* ensures that purpose includes to make provision to implement in New Zealand law New Zealand's obligations under Resolution 2178 (2014). This is because *new section 13F* (travelling intending to commit specified offence) inserted by *clause 16* helps to implement in New Zealand law New Zealand's obligations under Resolution 2178 (2014) (as to be defined in section 4(1)). *New section 3(c)* updates references to Sanctions Resolutions, in the light of relevant amended or new definitions inserted in section 4(1) by *clause 5*.

Definitions and transitional, savings, and related provisions

Clause 5 amends section 4(1), which contains definitions. The amendments—

- replace the definitions of Al-Qaida and the Taliban Sanctions Resolutions and Al-Qaida entity with updated or new definitions of Al-Qaida entity, ISIL (Da'esh) and Al-Qaida Sanctions Resolutions, Taliban entity, and Taliban Sanctions Resolutions:
- insert a replacement definition of carried out that reflects *new sections 5A(1) and 6A(2)* inserted by *clauses 7 and 8*:
- insert a definition of critical infrastructure, which is a new term that is used in section 5(3)(d) as amended by *clause 6(4)*:
- replace the definition of financial institution and the definition of suspicious transaction report (both definitions linked to the repealed Financial Transactions Reporting Act 1996) with definitions of reporting entity, service, and suspicious activity report linked to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (*see also* related changes in *clauses 11, 23 to 28, 33, and 36*):
- adjust the definition of financing of terrorism to reflect the changes made to section 8 by *clause 10*:

- insert a new definition of material support (*see new sections 8(1A), (2B), and (3) and 10(1)* inserted by *clauses 10 and 13*):
- insert a new definition of Resolution 2178 (2014) (*see new section 3(b)(vii)*):
- replace the definition of United Nations listed terrorist entity to update that definition and to include ISIL (Da'esh) and an ISIL (Da'esh) entity (as also defined, using a third new term, ISIL (Da'esh) and Al-Qaida Sanctions Resolutions, in section 4(1)) to make them designated terrorist entities (under paragraph (b) of the definition of that term in section 4(1)).

Clause 6 amends section 5, which is the definition of terrorist act. The definition includes an act that falls within section 5(2). Some requirements, relating to purpose and intention, in section 5(2) are adjusted so that—

- the act must be carried out for “1 or more purposes that are or include” (not for “the purpose of”) advancing an ideological, political, or religious cause; and
- the act must be carried out with the intention—
 - to induce “fear in a population” (not “terror in a civilian population”); or
 - “to coerce” (not “to unduly compel”) or to force a government or an international organisation to do or abstain from doing any act.

Section 5(3), which specifies required outcomes referred to in section 5(2), is also amended so that—

- section 5(3)(d) specifies serious interference with, or serious disruption to, “critical infrastructure” (not “an infrastructure facility”), if likely to endanger human life (and with the new term “critical infrastructure” having the meaning given to it in section 4(1) as amended by *clause 5*); and
- section 5(3)(e) specifies introduction or release of a disease-bearing organism, if likely to “cause major damage to” (not “devastate”) the national economy of a country.

Clause 7 inserts *new sections 5A and 5B*.

New section 5A relocates section 25 (which is about carrying out and facilitating terrorist acts, and is repealed by *clause 21*). *New section 5A(1)* is identical in substance to section 25(1), and so provides that, for the purposes of the principal Act, a terrorist act is carried out if any 1 or more of the following occurs:

- (a) planning or other preparations to carry out the act, whether it is actually carried out or not;
- (b) a credible threat to carry out the act, whether it is actually carried out or not;
- (c) an attempt to carry out the act;
- (d) the carrying out of the act.

New section 5B is about the transitional, savings, and related provisions in *new Schedule 1AA* (inserted by *clause 34*).

Terrorist act

Clause 8 amends section 6A, which makes it an offence to engage in a terrorist act. The amendments—

- amend the heading to section 6A, to help to make clear that the section covers only credible threats, attempts, and carrying out (because the other way in which *new section 5A(1)* provides that a terrorist act may be carried out—planning or other preparations to carry out the act—is dealt with in *new section 6B* inserted by *clause 9*):
- amend section 6A(1) to replace “who engages in” with “if the person carries out”, as the only kinds of “engagement in” that section 6A(1) is to cover are those in “carrying out” as defined in *new section 5A(1)(b), (c), and (d)*, and to ensure that section 6A(1) is aligned fully with the language of section 4(1) and of *new sections 5A and 6B(1)*:
- insert a *new section 6A(2)* providing that, in section 6A(1), carried out, in relation to a terrorist act, has, despite *new section 5A(1)*, only the meaning given in *new section 5A(1)(b), (c), and (d)*:
- replace section 6A(2), which states the maximum penalty—imprisonment for life or a lesser term—for committing “a terrorist act”, with *new section 6A(4)*, which states the same maximum penalty for committing an offence against section 6A(1):
- make clear how section 6A(1) applies to an attempt to carry out a terrorist act, and operates with (and with the penalty in) sections 72 and 311(1) of the Crimes Act 1961 (*new section 6A(3) and (5)*).

Clause 9 inserts *new section 6B*, about planning or other preparations to carry out a terrorist act.

The need for a specific planning or preparation offence was reinforced by the High Court decision in *R v S* [2020] NZHC 1710. That decision held that liability under section 6A of the Terrorism Suppression Act 2002 does not extend to planning or acts in preparation for a terrorist act when the planning or preparation does not attract liability for a recognised inchoate offence (such as attempt, conspiracy, or incitement).

New section 6B(1) applies to planning or other preparations to carry out the act. It ensures that a person commits an offence if—

- the person carries out a terrorist act (within the meaning of *new section 5A(1)(a)*) by planning or other preparations to carry out the act, whether it is actually carried out or not; and
- the planning done is, or other preparations made are, under section 72(2) of the Crimes Act 1961, only preparation for the commission of, and too remote to constitute an attempt to commit, the offence of the carrying out of the act under section 6A(1).

However, *new section 6B(1)* does not (as stated in *new section 6B(2)*) apply to, and criminalise, planning or other preparations to—

- plan, or otherwise prepare, to carry out the act, whether it is actually carried out or not; or
- make a credible threat to carry out the act, whether it is actually carried out or not; or
- attempt to carry out the act.

New section 6B(3) ensures that, in a prosecution for an offence against *new section 6B(1)*, the prosecutor—

- must prove that the planning done is, or the other preparations made are, for an act that is, or if it were actually carried out would be, a terrorist act as defined in section 5(1)(a), (b), or (c); and
- in particular, if that act falls within section 5(2) (in a case to which section 5(1)(a) applies), must prove the intention and purpose elements in section 5(2) and (3); but
- in a case to which section 5(1)(a), (b), or (c) applies, need not prove a specific target, location, date, or time for that act.

New section 6B(4) specifies that the maximum penalty for the offence is imprisonment for a term not exceeding 7 years.

New section 6B(5) ensures that sections 72, 310, and 311 of the Crimes Act 1961 do not apply to an offence against *new section 6B(1)*. The effect is that—

- a person who conspires with any person to commit an offence against *new section 6B(1)*, or to do or omit, in any part of the world, anything the doing or omission of which would be such an offence, is not criminally liable under section 310 of the Crimes Act 1961:
- a person who attempts to commit an offence against *new section 6B(1)* is not criminally liable under sections 72 and 311(1) of the Crimes Act 1961:
- a person who incites, counsels, or attempts to procure a person to commit an offence against *new section 6B(1)*, when that offence is not in fact committed, is *not* criminally liable under section 311(2) of the Crimes Act 1961.

Financing of, or provision of material support for, terrorism

Clause 10 amends section 8, which is the offence of financing of terrorism.

New section 8(1) replaces the offence in section 8(1), which is about wilful provision or collection of funds for use to carry out terrorist acts. *New section 8(1)* introduces a new mental element of recklessness about whether the funds will be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.

New section 8(1A) is a new offence about wilful provision of material support for use to carry out terrorist acts.

New section 8(2A) replaces the offence in section 8(2A), which is about wilful provision or collection of funds for use by an entity known to carry out or participate in the carrying out of terrorist acts. *New section 8(2A)* introduces a new mental element of recklessness about whether the funds will be used by an entity known to be an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

New section 8(2B) is a new offence about wilful provision of material support for use by an entity known to carry out, or participate in the carrying out of, terrorist acts.

New section 8(3) re-enacts section 8(3) with adjustments to reflect *new section 8(1A) and (2B)*.

New section 8(4) revises section 8(4) so that the maximum penalty for financing of, or provision of material support for, terrorism is imprisonment for a term not exceeding—

- 14 years, if the mental element under *new section 8(1)(d), (1A)(d), (2A)(d), or (2B)(d)* is intention;
- 10 years, if the mental element under *new section 8(1)(d), (1A)(d), (2A)(d), or (2B)(d)* is knowledge or recklessness.

Dealing with property

Section 9(2) gives, for the purposes of section 9(1), examples of a reasonable excuse for dealing with property referred to in section 9(1). *Clause 11* updates the example in section 9(2)(b). This example, as updated, applies where a reporting entity (but not a financial institution, which is now an out-of-date term) acts to freeze assets of a designated terrorist entity.

Making property, or material support, available

Clause 12 amends the cross-heading above section 10. The amendment reflects the changes made to section 10 by *clause 13*.

Clause 13 amends section 10, which makes it an offence to make property, or financial or related services, available to a designated terrorist entity. The heading to section 10 is amended to reflect *new section 10(1)*. *New section 10(1)* extends the offence so it covers making available, or causing to be made available, to, or for the benefit of, an entity, any property, or any material support (which, as defined in section 4(1), includes financial or related services), knowing that, or being reckless about whether, the entity is a designated terrorist entity. Section 10(5) is amended to increase, from 7 years to 10 years, the maximum penalty (term of imprisonment) for the offence. *New section 8(4)(b)* provides for the same maximum penalty.

Clause 14 amends the cross-heading above section 11. The amendment reflects the changes made to section 10 by *clause 13*.

Weapons training or combat training for terrorist purposes

Clause 15 inserts *new section 13AA*, which introduces a new offence of providing or receiving weapons training or combat training for terrorist purposes. *New section 13AA(1)* provides that a person commits an offence if the person—

- provides or receives weapons training or combat training; and
- knows that the training is provided or received for purposes that are or include 1 or both of the following purposes:
 - to carry out 1 or more terrorist acts (whether any or all of them are actually carried out or not);
 - to enhance the ability of any entity to carry out, or to participate in the carrying out of, 1 or more terrorist acts (whether any or all of them are actually carried out or not).

In a prosecution for an offence against *new section 13AA(1)*, the prosecutor need not prove a specific target, location, date, or time for the 1 or more terrorist acts referred to in *new section 13AA(1)(b)(i) or (ii)*.

A person who commits an offence against *new section 13AA(1)* is liable on conviction to imprisonment for a term not exceeding 7 years.

Travelling

Clause 16 inserts *new section 13F*, which introduces a new offence of travelling intending to commit a specified offence.

New section 13F(1) ensures that a person commits an offence if the person—

- travels (by any means) to, from, or via New Zealand; and
- does so intending to do anything that, if done wholly in New Zealand, would be a specified offence (as defined in *new section 13F(3)*).

New section 13F(2) sets out situations in which a person is taken to have travelled to, from, or via New Zealand, but does not limit the generality of *new section 13F(1)*.

New section 13F(1) applies, as stated in *new section 13F(4)*, regardless of whether—

- the person, if travelling from, or via, New Zealand, departs from their original location, or reaches their intended ultimate destination;
- the person has the intention mentioned in *new section 13F(1)(b)* at any time or times, or at all times, during the travel concerned;
- the person intends to do wholly or in part in New Zealand, or wholly outside New Zealand, the thing that, if done in New Zealand, would be a specified offence;
- the person does the thing that, if done wholly in New Zealand, would be a specified offence.

New section 13F(5) specifies the maximum available penalty for an offence against *new section 13F(1)*.

Extraterritorial jurisdiction

Clause 17 amends section 14, which deals with extraterritorial jurisdiction under sections 15 to 18 for offences under specified sections. The amendment ensures that the specified sections include section 6A, *new section 6B* (inserted by *clause 9*), *new section 13AA* (inserted by *clause 15*), section 13A, and *new section 13F* (inserted by *clause 16*).

Clause 18 amends section 15(d), which deals with acts outside New Zealand on New Zealand ships. Section 15(d) is amended to align it more fully with the Ship Registration Act 1992. Section 15(d), as amended, will apply to acts done on board any ship not registered under that Act but required *or entitled* to be registered under that Act.

Clause 19 amends section 17, which identifies further acts outside New Zealand to which financing of, or provision of material support for, terrorism applies. The amendments—

- reflect the changes made to section 8 by *clause 10*; and
- replace “done” with “carried out”, to ensure that section 17 is aligned fully with section 4(1), *new section 5A(1)*, and section 6A(1).

Clause 20 amends section 18, which ensures that specified offences also apply to acts outside New Zealand if the alleged offender is in New Zealand and is not extradited. The amendments reflect the changes made to section 8 by *clause 10*.

Further provisions relating to interim and final designations

Clause 21 repeals section 25, about carrying out and facilitating terrorist acts. Section 25 is to be re-enacted, in a more accessible location, as *new section 5A* (see *clause 7*), which is identical in substance to section 25. A key reason for this relocation is that section 25 applies to the principal Act as a whole, including all offences under that Act, and not just to the terrorist designation process (which the current placement may give the appearance of doing).

Clause 22 amends section 28, about further notification of the making of a designation under section 20 or section 22. The amendment reflects the offence relating to material support in *new section 10(1)* (inserted by *clause 13*).

Review, revocation, and expiry of designations

Clause 23 amends section 34, about revocation of designations. The amendment reflects the new offence relating to material support in *new section 10(1)* (inserted by *clause 13*).

Duty to report suspicions relating to property

Clauses 24 to 26 amend sections 43, 44, and 47, about suspicious property reports. The amendments ensure that the sections apply only to a reporting entity (and so not also to a financial institution, which is now an out-of-date term). Section 44(4) is also amended so that it applies not only to a transaction or proposed transaction, but also

to a service or proposed service. This amendment is to recognise fully the scope of a suspicious activity report (as that term is defined in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009).

Customs' powers in relation to certain property

Clauses 27 and 28 update sections 47A and 47C. The updates repeal provisions referring to the Financial Transactions Reporting Act 1996 (repealed, on 1 August 2019, by section 73 of the Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017).

Forfeiture

Clause 29 amends section 57, which is about the effect of, and appeals against, forfeiture of property orders made under section 55. The amendment deletes cross-references that were made unnecessary by amendments made on 20 November 2007 by the Terrorism Suppression Amendment Act 2007.

Investigation and prosecution of offences against Act or referred to in Conventions

Clause 30 amends section 68, which requires the Attorney-General to communicate the outcome of certain prosecutions. The amendment reflects the changes made to section 8 by *clause 10*.

Extradition

Clause 31 amends section 69, which deems certain offences to be included in extradition treaties. The amendments reflect the changes made to section 8 by *clause 10*.

Repeal of spent provisions

Clauses 32 and 33 repeal spent provisions.

Schedules

Clause 34 inserts *new Schedule 1AA*, which contains transitional, savings, and related provisions (*see also new section 5B*, inserted by *clause 7*).

Clause 35 inserts *new Schedules 4D and 4E*:

- *New Schedule 4D* sets out a copy of Resolution 2178 (2014) (as defined in section 4(1), as amended by *clause 5*):
- *New Schedule 4E* sets out applicable maximum penalties for an offence against *new section 13F(1)* (*see new section 13F(5)* inserted by *clause 16*).

Clause 36 amends Schedule 5 (details to be included in suspicious property reports). The amendments ensure that the clauses of Schedule 5 apply only to a reporting entity (and so not also to a financial institution, which is now an out-of-date term).

Part 2

Amendments to other Acts

Subpart 1—Substantive amendments to Search and Surveillance Act 2012

Subpart 1 amends the Search and Surveillance Act 2012. Sections 15, 16, 17, and 48 of that Act confer warrantless powers of entry, search, and surveillance. Those powers apply to an offence punishable by imprisonment for a term of 14 years or more. The amendments ensure that those powers also apply to an offence, punishable by imprisonment for a term not more than 7 years, against *new section 6B(1)* (terrorist act: planning or other preparations to carry out) of the Terrorism Suppression Act 2002.

Subpart 2—Substantive amendments to Terrorism Suppression (Control Orders) Act 2019

Subpart 2 amends the Terrorism Suppression (Control Orders) Act 2019. The amendments extend the meaning of a relevant person in respect of whom a control order may be applied for and made. They ensure that a relevant person means (*see new section 6(1AA)*) a person who is—

- a person to whom section 6(1) applies—that subsection is about engagement in terrorism-related activities in a foreign country, is currently part of that Act, and has been since it was first enacted—and who, in that Act, is to be called, under section 5, a relevant returner; or
- a person to whom *new section 6(5)* applies—this subsection is new, and is about commission of a terrorism-related New Zealand offence punished by imprisonment (other than imprisonment for life)—and who, in that Act, is to be called, under section 5, a relevant offender.

New section 6(5) applies to a person (a relevant offender) who is 18 years old or older and—

- who, on or after the commencement date of the Act arising from this Bill, committed, and was convicted of, a terrorism-related New Zealand offence (*see new section 8A* inserted by *clause 46*); and
- who was sentenced, on or after that commencement date, for that offence, to a determinate sentence of imprisonment; and
- whose statutory release date, or whose last day as an offender who is subject to release conditions, for 1 or more sentences of imprisonment that are or include that determinate sentence of imprisonment, is after that commencement date.

New section 8A defines a terrorism-related New Zealand offence as an offence that is—

- an offence against the Terrorism Suppression Act 2002 (even if that offence was committed wholly, or partly, outside New Zealand, but is prosecuted in

New Zealand under any of sections 15 to 18 of that Act and sections 7, 8, and 8A of the Crimes Act 1961); or

- an offence—
 - against section 124(1), 127(4), 129(3), or 131A(1) of the Films, Videos, and Publications Classification Act 1993, or section 390 of the Customs and Excise Act 2018; and
 - that involves a publication that is objectionable (as those terms are defined in sections 2 and 3 of the Films, Videos, and Publications Classification Act 1993) for reasons that are or include the extent and degree to which, and the manner in which, the publication (as provided in section 3(3)(d) of that Act) promotes or encourages acts of terrorism.

The court may make a control order only on an application for the purpose made by the Commissioner (*see* section 14(1)).

Sections 15 and 16 are amended to ensure that they enable only applications for interim control orders or final control orders in respect of a relevant returner.

An application for an interim control order or a final control order in respect of a relevant offender will have to be made by the Commissioner under *new section 16A or 16B* (inserted by *clause 50*).

New section 16A enables the Commissioner to make an application for an interim control order in respect of a relevant offender only if—

- the application is made—
 - after they become a relevant offender; and
 - on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in *new section 6(5)(c)*; and
- the Commissioner believes on reasonable grounds that it is necessary and appropriate that the interim control order is made as soon as practicable in order to manage the real risks posed by the relevant offender of engagement in terrorism-related activities in a country.

The application for the interim control order may be made, and must be heard and determined by the court, without notice to the relevant offender if the Commissioner believes on reasonable grounds that it is necessary and appropriate to make the application, and for it to be heard and determined, without notice in order to manage the real risks posed by the relevant offender of engagement in terrorism-related activities in a country.

New section 16B enables the Commissioner to make an application for a final control order in respect of a relevant offender only if—

- no interim control order in respect of the relevant offender has been applied for, and the application for the final control order is made—
 - after they become a relevant offender; and

- on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in *new section 6(5)(c)*; or
- an interim control order in respect of the relevant offender was applied for and made, and the application for the final control order is made—
 - within 3 months after the date on which the interim order was served on the relevant offender; or
 - within any longer or shorter period the court directs (on its own initiative or on an application for the purpose made) on or after making the interim order and during that 3-month period; or
- an interim control order in respect of the relevant offender was applied for and declined, and the application for the final control order is made—
 - after they become a relevant offender; and
 - on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in *new section 6(5)(c)*; and
 - because of a material change in circumstances since the interim control order was declined.

The application for the final control order must be—

- made on notice to the relevant offender; and
- set down for hearing, and heard, as soon as practicable; and
- determined as soon as practicable.

New section 25(4A) ensures that the 2-year maximum duration of a final control order in respect of a relevant offender excludes any period on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in *new section 6(5)(c)*.

Section 38 is amended so that the required review of the principal Act starts as soon as practicable after the second anniversary of the commencement of (not the principal Act but) the Act arising from this Bill.

Subpart 3—Consequential amendments related to Part 1

Subpart 3 amends consequentially the Acts specified in *Schedule 3*.

Hon Kris Faafoi

Counter-Terrorism Legislation Bill

Government Bill

Contents

	Page
1 Title	4
2 Commencement	4
Part 1	
Amendments to Terrorism Suppression Act 2002	
<i>Principal Act</i>	
3 Principal Act	5
<i>Purpose</i>	
4 Section 3 amended (Purpose of this Act)	5
<i>Definitions and transitional, savings, and related provisions</i>	
5 Section 4 amended (Interpretation)	5
6 Section 5 amended (Terrorist act defined)	8
7 New sections 5A and 5B inserted	8
5A Carrying out and facilitating terrorist acts	8
5B Transitional, savings, and related provisions	9
<i>Terrorist act</i>	
8 Section 6A amended (Terrorist act)	9
9 New section 6B inserted (Terrorist act: planning or other preparations to carry out)	9
6B Terrorist act: planning or other preparations to carry out	9
<i>Financing of, or provision of material support for, terrorism</i>	
10 Section 8 amended (Financing of terrorism)	10

Counter-Terrorism Legislation Bill

	<i>Dealing with property</i>	
11	Section 9 amended (Prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity)	12
	<i>Making property, or material support, available</i>	
12	Cross-heading above section 10 amended	12
13	Section 10 amended (Prohibition on making property, or financial or related services, available to designated terrorist entity)	12
14	Cross-heading above section 11 amended	12
	<i>Weapons training or combat training for terrorist purposes</i>	
15	New section 13AA and cross-heading inserted	13
	<i>Weapons training or combat training for terrorist purposes</i>	
13AA	Providing or receiving weapons training or combat training for terrorist purposes	13
	<i>Travelling</i>	
16	New section 13F and cross-heading inserted	13
	<i>Travelling intending to commit specified offence</i>	
13F	Travelling intending to commit specified offence	13
	<i>Extraterritorial jurisdiction</i>	
17	Section 14 amended (Offences also apply in certain cases outside New Zealand)	15
18	Section 15 amended (Offences apply to acts outside New Zealand by New Zealand citizens or on New Zealand aircraft and ships)	15
19	Section 17 amended (Further acts outside New Zealand to which financing of terrorism applies)	15
20	Section 18 amended (Offences also apply to acts outside New Zealand if alleged offender is in New Zealand and is not extradited)	15
	<i>Further provisions relating to interim and final designations</i>	
21	Section 25 repealed (Carrying out and facilitating terrorist acts)	16
22	Section 28 amended (Further notification of making of designation)	16
	<i>Review, revocation, and expiry of designations</i>	
23	Section 34 amended (Revocation of designations)	16
	<i>Duty to report suspicions relating to property</i>	
24	Section 43 amended (Suspicions that property owned or controlled by designated terrorist entities to be reported)	16
25	Section 44 amended (Nature of suspicious property report)	16

Counter-Terrorism Legislation Bill

26	Section 47 amended (Protection of identity of persons making reports)	17
	<i>Customs' powers in relation to certain property</i>	
27	Section 47A amended (Detention of goods suspected to be terrorist property)	17
28	Section 47C amended (Further provisions about detention under section 47A)	17
	<i>Forfeiture</i>	
29	Section 57 amended (Further provisions relating to orders under section 55)	17
	<i>Investigation and prosecution of offences against Act or referred to in Conventions</i>	
30	Section 68 amended (Attorney-General to communicate outcome of prosecution)	17
	<i>Extradition</i>	
31	Section 69 amended (Offences deemed to be included in extradition treaties)	17
	<i>Repeal of spent provisions</i>	
32	Cross-heading above section 74 amended	18
33	Sections 76 to 80 and cross-headings repealed	18
	<i>Schedules</i>	
34	New Schedule 1AA inserted	18
35	New Schedules 4D and 4E inserted	18
36	Schedule 5 amended	18

Part 2

Amendments to other Acts

Subpart 1—Substantive amendments to Search and Surveillance Act 2012

37	Amendments to Search and Surveillance Act 2012	18
38	Section 15 amended (Entry without warrant to find and avoid loss of evidential material relating to certain offences)	18
39	Section 16 amended (Searching people in public place without warrant for evidential material relating to certain offences)	19
40	Section 17 amended (Warrantless entry and search of vehicle for evidential material relating to certain offences)	19
41	Section 48 amended (Surveillance device warrant need not be obtained for use of surveillance device in some situations of emergency or urgency)	19

	Subpart 2—Substantive amendments to Terrorism Suppression (Control Orders) Act 2019	
42	Amendments to Terrorism Suppression (Control Orders) Act 2019	19
43	Section 5 amended (Interpretation)	19
44	Section 6 amended (Meaning of relevant person)	20
45	Section 7 amended (Duty to have regard to specified aspects of evidence relied on)	20
46	New section 8A inserted (Meaning of terrorism-related New Zealand offence)	21
	8A Meaning of terrorism-related New Zealand offence	21
47	Section 12 amended (Power to make)	21
48	Section 15 amended (Application for interim control order)	21
49	Section 16 amended (Application for final control order)	21
50	New sections 16A and 16B inserted	21
	16A Application for interim control order in respect of relevant offender	22
	16B Application for final control order in respect of offender relevant person	22
51	Section 21 amended (Service of control order)	23
52	Section 25 amended (Duration)	23
53	Section 29 amended (Expiry if relevant person sentenced to long- term sentence)	24
54	Section 38 amended (Review of Act)	24
55	Schedule 2 amended	24
	Subpart 3—Consequential amendments related to Part 1	
56	Consequential amendments to other enactments	24
	Schedule 1	25
	New Schedule 1AA inserted	
	Schedule 2	26
	New Schedules 4D and 4E inserted	
	Schedule 3	37
	Consequential amendments	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Counter-Terrorism Legislation Act **2021**.

2 Commencement

This Act comes into force on the day after the date of Royal assent.

5

Part 1 Amendments to Terrorism Suppression Act 2002

Principal Act

3 **Principal Act**

This **Part** amends the Terrorism Suppression Act 2002 (the **principal Act**). 5

Purpose

4 **Section 3 amended (Purpose of this Act)**

(1) After section 3(b)(vi), insert:

(vii) Resolution 2178 (2014); and

(2) Replace section 3(c) with: 10

(c) to make further provision to implement, in part,—

(i) the ISIL (Da'esh) and Al-Qaida Sanctions Resolutions; and

(ii) the Taliban Sanctions Resolutions.

Definitions and transitional, savings, and related provisions

5 **Section 4 amended (Interpretation)** 15

(1) In section 4(1), repeal the definitions of **Al-Qaida and the Taliban Sanctions Resolutions** and **Al-Qaida entity**, and insert in its appropriate alphabetical order:

Al-Qaida entity, for a measure that is set out, or referred to, in 1 or more ISIL (Da'esh) and Al-Qaida Sanctions Resolutions, and that is provided for in this Act, means Al-Qaida, or an entity that is not Al-Qaida but is designated, by or under those resolutions, as an entity that is— 20

(a) associated with Al-Qaida; and

(b) an entity to which that measure is to be applied

(2) In section 4(1), replace the definition of **carried out** with: 25

carried out, in relation to a terrorist act,—

(a) has the meaning given to it in **section 5A(1)**; but

(b) in section 6A(1), has, despite **section 5A(1)**, only the narrower meaning given to it in **section 6A(2)**

(3) In section 4(1), insert in its appropriate alphabetical order: 30

critical infrastructure means all or any of the following that provide the essential services of a population:

(a) assets:

(b) facilities:

- (c) networks:
- (d) systems
- (4) In section 4(1), repeal the definition of **facility** and **financial institution**, and the definition of **suspicious transaction report**, and insert in their appropriate alphabetical order: 5
- facility** has the meaning referred to in **section 44(5)**
- reporting entity** has the meaning referred to in **section 44(5)**
- service** has the meaning referred to in **section 44(5)**
- suspicious activity report** has the meaning referred to in **section 44(5)**
- (5) In section 4(1), definition of **financing of terrorism**, after “**financing of**”, insert “, **or provision of material support for**,”. 10
- (6) In section 4(1), definition of **financing of terrorism**, paragraph (a), replace “section 8(1) or (2A)” with “**section 8(1), (1A), (2A), or (2B)**”.
- (7) In section 4(1), insert in their appropriate alphabetical order:
- ISIL (Da’esh)** means the splinter group of Al-Qaida known as the Islamic State in Iraq and the Levant (ISIL), also known as the Islamic State in Iraq and al Sham (ISIS), and also known as Da’esh 15
- ISIL (Da’esh) and Al-Qaida Sanctions Resolutions** means Resolution 1267 (1999) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 15 October 1999 and its successor resolutions, including, without limitation,— 20
- (a) Resolution 1333 (2000) adopted on 19 December 2000; and
- (b) Resolution 1390 (2002) adopted on 16 January 2002; and
- (c) Resolution 1989 (2011) adopted on 17 June 2011; and
- (d) Resolution 2170 (2014) adopted on 15 August 2014; and 25
- (e) Resolution 2253 (2015) adopted on 17 December 2015
- ISIL (Da’esh) entity**, for a measure that is set out, or referred to, in 1 or more ISIL (Da’esh) and Al-Qaida Sanctions Resolutions, and that is provided for in this Act, means ISIL (Da’esh), or an entity that is not ISIL (Da’esh) but is designated, by or under those resolutions, as an entity that is— 30
- (a) associated with ISIL (Da’esh); and
- (b) an entity to which that measure is to be applied
- (8) In section 4(1), insert in their appropriate alphabetical order:
- material support**—
- (a) means support that— 35
- (i) does, or may, assist in, contribute to, or make easier, the carrying out of 1 or more terrorist acts; and therefore

- (ii) does, or may do, more than only satisfy essential human needs of those to whom, or for whose benefit, it is provided—
- (A) in good faith for genuine humanitarian reasons; and
- (B) impartially or neutrally as between people who have those needs; and 5
- (b) includes, without limiting the generality of **paragraph (a)**, support that complies with that paragraph and that is all or any of the following:
- (i) advice given in making available financial or related services, or financial or related services:
- (ii) other advice, or other services, derived from acquired skills or knowledge (for example, agency, brokerage, translation, driving or pilotage, or training to impart skills): 10
- (iii) equipment, information, technology, or other property or resources (for example, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, or personnel (the assistance or efforts of 1 or more individuals who may be or include oneself)): 15
- (iv) accommodation, lodging, stockpiling, or storage:
- (v) transportation
- Resolution 2178 (2014)** means Resolution 2178 (2014) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 24 September 2014, a copy of which is set out in **Schedule 4D** 20
- (9) In section 4(1), repeal the definitions of **Taliban entity** and **United Nations listed terrorist entity**, and insert in their appropriate alphabetical order:
- Taliban entity**, for a measure that is set out, or referred to, in 1 or more Taliban Sanctions Resolutions, and that is provided for in this Act, means an entity that— 25
- (a) is not Al-Qaida, an Al-Qaida entity, or the Taliban; but
- (b) is designated, by or under those resolutions, as an entity to which that measure is to be applied 30
- Taliban Sanctions Resolutions** means Resolution 1267 (1999) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 15 October 1999, and its successor resolutions, including, without limitation,—
- (a) Resolution 1333 (2000) adopted on 19 December 2000; and 35
- (b) Resolution 1390 (2002) adopted on 16 January 2002; and
- (c) Resolution 1988 (2011) adopted on 17 June 2011
- United Nations listed terrorist entity** means an entity that is—
- (a) Al-Qaida

- (b) an Al-Qaida entity; or
- (c) the Taliban; or
- (d) a Taliban entity; or
- (e) ISIL (Da'esh); or
- (f) an ISIL (Da'esh) entity

5

6 Section 5 amended (Terrorist act defined)

- (1) In section 5(2), replace “the purpose of” with “1 or more purposes that are or include”.
- (2) In section 5(2)(a), replace “terror in a civilian population” with “fear in a population”.
- (3) In section 5(2)(b), replace “unduly compel” with “coerce”.
- (4) In section 5(3)(d), replace “an infrastructure facility” with “critical infrastructure”.
- (5) In section 5(3)(e), replace “devastate” with “cause major damage to”.

10

7 New sections 5A and 5B inserted

15

After section 5, insert:

5A Carrying out and facilitating terrorist acts

Carrying out includes preparations, credible threats, and attempts

- (1) For the purposes of this Act, a terrorist act is **carried out** if any 1 or more of the following occurs:
 - (a) planning or other preparations to carry out the act, whether it is actually carried out or not:
 - (b) a credible threat to carry out the act, whether it is actually carried out or not:
 - (c) an attempt to carry out the act:
 - (d) the carrying out of the act.

20

25

Facilitation requires some actual knowledge

- (2) For the purposes of this Act, a terrorist act is **facilitated** only if the facilitator knows that a terrorist act is facilitated, but this does not require that—
 - (a) the facilitator knows that any specific terrorist act is facilitated:
 - (b) any specific terrorist act was foreseen or planned at the time it was facilitated:
 - (c) any terrorist act was actually carried out.

30

5B Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

Terrorist act

- 8 Section 6A amended (Terrorist act)** 5
- (1) Replace the heading to section 6A with “**Terrorist act: credible threat, attempt, and carrying out**”.
- (2) Before section 6A(1), insert:
- Offence*
- (3) In section 6A(1), replace “who engages in” with “if the person carries out”. 10
- (4) Replace section 6A(2) with:
- Meaning, in subsection (1), of carried out*
- (2) In subsection (1), **carried out**, in relation to a terrorist act, has, despite **section 5A(1)**, only the meaning given in **section 5A(1)(b), (c), and (d)**.
- Effect of subsection (1) applying to attempt* 15
- (3) However, subsection (1) applying to an attempt to carry out the act (within the meaning of **section 5A(1)(c)**) means only that the person may under section 72 of the Crimes Act 1961 be guilty of an attempt to commit the offence in that subsection as it applies to the carrying out of the act (within the meaning of **section 5A(1)(d)**). 20
- Penalty*
- (4) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for life or a lesser term.
- (5) A person who attempts to commit the offence in subsection (1) as it applies to the carrying out of the act (within the meaning of **section 5A(1)(d)**) is under section 311(1) of the Crimes Act 1961 liable to imprisonment for a term not exceeding 10 years. 25
- 9 New section 6B inserted (Terrorist act: planning or other preparations to carry out)**
- After section 6A, insert: 30
- 6B Terrorist act: planning or other preparations to carry out**
- Offence*
- (1) A person commits an offence if—
- (a) the person carries out a terrorist act (within the meaning of **section 5A(1)(a)**) by planning or other preparations to carry out the act, whether it is actually carried out or not; and 35

- (b) the planning done is, or other preparations made are, for the purposes of section 72(2) of the Crimes Act 1961, only preparation for the commission of, and too remote to constitute an attempt to commit, an offence against section 6A(1).
- (2) **Subsection (1)** does not apply to planning or other preparations to— 5
- (a) plan or make other preparations to carry out the act, whether it is actually carried out or not; or
- (b) make a credible threat to carry out the act, whether it is actually carried out or not; or
- (c) attempt to carry out the act. 10
- (3) In a prosecution for an offence against **subsection (1)**, the prosecutor—
- (a) must prove that the planning done is, or the other preparations made are, for an act that is, or if it were actually carried out would be, a terrorist act as defined in section 5(1)(a), (b), or (c); and
- (b) in particular, if that act falls within section 5(2) (in a case to which section 5(1)(a) applies), must prove the intention and purpose elements in section 5(2) and (3); but 15
- (c) in a case to which section 5(1)(a), (b), or (c) applies, need not prove a specific target, location, date, or time for that act.
- Penalty* 20
- (4) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 7 years.
- Conspiring to commit offence, and attempt to commit or procure commission*
- (5) Sections 72, 310, and 311 of the Crimes Act 1961 do not apply to an offence against **subsection (1)**. 25

Financing of, or provision of material support for, terrorism

10 Section 8 amended (Financing of terrorism)

- (1) In the heading to section 8, after “**Financing of**”, insert “, or provision of material support for,”.
- (2) Replace section 8(1) to (4) with: 30
- Wilful provision or collection of funds for use to carry out terrorist acts*
- (1) A person commits an offence if the person provides or collects funds—
- (a) directly or indirectly; and
- (b) wilfully; and
- (c) without lawful justification or reasonable excuse; and 35
- (d) intending that the funds be used, or knowing that, or being reckless about whether, they will be used, in full or in part, in order to carry out

1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.

Wilful provision of material support for use to carry out terrorist acts

- (1A) A person commits an offence if the person provides material support—
- (a) directly or indirectly; and 5
 - (b) wilfully; and
 - (c) without lawful justification or reasonable excuse; and
 - (d) intending that the support be used, or knowing that, or being reckless about whether, it is to be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts. 10

Wilful provision or collection of funds for use by entity known to carry out or participate in carrying out of terrorist acts

- (2A) A person commits an offence if the person provides or collects funds—
- (a) directly or indirectly; and 15
 - (b) wilfully; and
 - (c) without lawful justification or reasonable excuse; and
 - (d) intending that the funds be used, or knowing that, or being reckless about whether, they will be used, by an entity that the person knows is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts. 20

Wilful provision of material support for use by entity known to carry out or participate in carrying out of terrorist acts

- (2B) A person commits an offence if the person provides material support—
- (a) directly or indirectly; and 25
 - (b) wilfully; and
 - (c) without lawful justification or reasonable excuse; and
 - (d) intending that the material support be used, or knowing that, or being reckless about whether, it will be used, by an entity that the person knows is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts. 30

Funds or material support need not be used to carry out terrorist act

- (3) In a prosecution for financing of, or provision of material support for, terrorism, it is not necessary for the prosecutor to prove that the funds or material support collected or provided were or was actually used, in full or in part, to carry out a terrorist act. 35

Penalty

- (4) A person who commits financing of, or provision of material support for, terrorism is liable on conviction to imprisonment for a term not exceeding—
- (a) 14 years, if the mental element under **subsection (1)(d), (1A)(d), (2A)(d), or (2B)(d)** is intention: 5
- (b) 10 years, if the mental element under **subsection (1)(d), (1A)(d), (2A)(d), or (2B)(d)** is knowledge or recklessness.

Dealing with property

- 11 Section 9 amended (Prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity)** 10
- (1) In section 9(2), replace “those provisions” with “subsection (1)”.
- (2) In section 9(2)(b), replace “financial institution” with “reporting entity”.

Making property, or material support, available

- 12 Cross-heading above section 10 amended**
- In the cross-heading above section 10, replace “*financial or related services,*” 15
with “*material support,*”.
- 13 Section 10 amended (Prohibition on making property, or financial or related services, available to designated terrorist entity)**
- (1) In the heading to section 10, replace “**financial or related services,**” with “**material support,**” 20
- (2) Replace section 10(1) with:
- (1) A person commits an offence if the person makes available, or causes to be made available, to, or for the benefit of, an entity, any property, or any material support,—
- (a) directly or indirectly; and 25
- (b) without lawful justification or reasonable excuse; and
- (c) knowing that, or being reckless about whether, the entity is a designated terrorist entity.
- (3) In section 10(4), replace “services” with “support”.
- (4) In section 10(5), replace “7 years” with “10 years”. 30
- (5) In section 10(6), replace “services” with “support” in each place.
- 14 Cross-heading above section 11 amended**
- In the cross-heading above section 11, replace “*financial or related services,*”
with “*material support,*”.

*Weapons training or combat training for terrorist purposes***15 New section 13AA and cross-heading inserted**

After section 13, insert:

*Weapons training or combat training for terrorist purposes***13AA Providing or receiving weapons training or combat training for terrorist purposes** 5*Offence*

- (1) A person commits an offence if the person—
- (a) provides or receives weapons training or combat training; and
 - (b) knows that the training is provided or received for purposes that are or include 1 or both of the following purposes:
 - (i) to carry out 1 or more terrorist acts (whether any or all of them are actually carried out or not):
 - (ii) to enhance the ability of any entity to carry out, or to participate in the carrying out of, 1 or more terrorist acts (whether any or all of them are actually carried out or not). 15

- (2) In a prosecution for an offence against **subsection (1)**, the prosecutor need not prove a specific target, location, date, or time for the 1 or more terrorist acts referred to in **subsection (1)(b)(i) or (ii)**. 20

Penalty

- (3) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 7 years. 20

*Travelling***16 New section 13F and cross-heading inserted**

After section 13E, insert:

*Travelling intending to commit specified offence***13F Travelling intending to commit specified offence** 25*Offence*

- (1) A person commits an offence if the person—
- (a) travels (by any means) to, from, or via New Zealand; and
 - (b) does so intending to do anything that, if done wholly in New Zealand, would be a specified offence. 30

- (2) For the purposes of **subsection (1)**, and without limiting the generality of that subsection, a person is taken to have travelled to, from, or via New Zealand if the person,—
- (a) for the purpose of arriving in, or travelling via, New Zealand,—
 - (i) disembarks from a craft through a Customs place; or 5
 - (ii) disembarks from a craft and reports to a Customs officer, to a Police station, or to any other place as directed by a Customs officer; or
 - (b) for the purpose of departing from New Zealand,—
 - (i) goes towards a craft through a Customs place; or 10
 - (ii) goes towards a craft as otherwise authorised by the chief executive of the New Zealand Customs Service, a Customs officer, the Customs and Excise Act 2018, or regulations made under that Act.
- (3) In this section, **specified offence** means an offence against all or any of the following: 15
- (a) section 6A (terrorist act: credible threat and carrying out (but excluding an attempt));
 - (b) **section 6B** (terrorist act: planning or other preparations to carry out);
 - (c) section 7 (terrorist bombing): 20
 - (d) section 8 (financing of, or provision of material support for, terrorism):
 - (e) section 9 (prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity):
 - (f) section 10 (prohibition on making property, or material support, available to designated terrorist entity): 25
 - (g) section 12 (recruiting members of terrorist groups):
 - (h) section 13 (participating in terrorist groups):
 - (i) **section 13AA** (providing or receiving weapons training or combat training for terrorist purposes):
 - (j) section 13A (harbouring or concealing terrorists): 30
 - (k) section 13B (offences involving use and movement of unmarked plastic explosives):
 - (l) section 13C (offences involving physical protection of nuclear material):
 - (m) section 13D (importation, acquisition, etc, of radioactive material):
 - (n) section 13E (offences involving radioactive material and radioactive devices). 35
- (4) **Subsection (1)** applies regardless of whether—

- (a) the person, if travelling from, or via, New Zealand, departs from their original location, or reaches their intended ultimate destination:
- (b) the person has the intention mentioned in **subsection (1)(b)** at any time or times, or at all times, during the travel concerned:
- (c) the person intends to do wholly or in part in New Zealand, or wholly outside New Zealand, the thing that, if done in New Zealand, would be a specified offence: 5
- (d) the person does the thing that, if done wholly in New Zealand, would be a specified offence.
- Penalty* 10
- (5) A person who commits an offence against **subsection (1)** is liable on conviction to the highest of the applicable maximum penalties specified in **Schedule 4E**.
- Compare: 1961 No 43 s 311(1); Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Aust) s 57(3) 15

Extraterritorial jurisdiction

- 17 Section 14 amended (Offences also apply in certain cases outside New Zealand)**
- (1) In section 14(1), replace “sections 7 to 13 and 13B to 13E” with “sections 6A to **13F**”. 20
- (2) In section 14(2), replace “sections 7 to 13” with “sections 6A to **13F**”.
- 18 Section 15 amended (Offences apply to acts outside New Zealand by New Zealand citizens or on New Zealand aircraft and ships)**
- In section 15(d)(ii), after “required”, insert “or entitled”.
- 19 Section 17 amended (Further acts outside New Zealand to which financing of terrorism applies)** 25
- (1) In the heading to section 17, after “**financing of**”, insert “, or provision of **material support for**”.
- (2) In section 17,— 30
- (a) after “financing of”, insert “, or provision of material support for,”; and
- (b) replace “done” with “carried out (as defined in sections 4(1) and **5A(1)**)”.
- 20 Section 18 amended (Offences also apply to acts outside New Zealand if alleged offender is in New Zealand and is not extradited)**
- (1) In section 18, replace “terrorist bombing, financing of terrorism, a nuclear terrorism offence, or a nuclear material offence” with “a specified offence”. 35
- (2) In section 18, insert as subsection (2):

- (2) In this section, a **specified offence**, means an offence that is—
- (a) terrorist bombing; or
 - (b) financing of, or provision of material support for, terrorism; or
 - (c) a nuclear terrorism offence; or
 - (d) a nuclear material offence.
- 5

Further provisions relating to interim and final designations

21 Section 25 repealed (Carrying out and facilitating terrorist acts)

Repeal section 25.

22 Section 28 amended (Further notification of making of designation)

In section 28(2)(b), replace “services” with “support”.

10

Review, revocation, and expiry of designations

23 Section 34 amended (Revocation of designations)

In section 34(2)(b), replace “services” with “support”.

Duty to report suspicions relating to property

24 Section 43 amended (Suspicions that property owned or controlled by designated terrorist entities to be reported) 15

(1) In section 43(2), replace “financial institution” with “reporting entity” in each place.

(2) In section 43(5), replace “**financial institution**” with “**reporting entity**”.

25 Section 44 amended (Nature of suspicious property report) 20

(1) In section 44(1)(b), delete—

(a) “a financial institution or by”; and

(b) “the financial institution or”.

(2) In section 44(1)(d)(ii), replace “the financial institution or reporting entity, as the case may be,” with “the reporting entity”.

25

(3) In section 44(2), delete “the financial institution or”.

(4) In section 44(4),—

(a) delete “financial institution or” in each place; and

(b) after “a transaction”, insert “or a service”; and

(c) after “the transaction or proposed transaction”, insert “or service or proposed service”.

30

(5) Replace section 44(5) with:

(5) In this section, section 47, and Schedule 5,—

(a)	facility, reporting entity, suspicious activity report, and transaction have the meanings given to them in section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and	
(b)	service has the meaning given to it in section 39A of that Act.	
26	Section 47 amended (Protection of identity of persons making reports) In section 47(1)(b)(i), delete “financial institution or”.	5
	<i>Customs’ powers in relation to certain property</i>	
27	Section 47A amended (Detention of goods suspected to be terrorist property)	
(1)	In section 47A(1)(a)(ia), replace “; or” with “; and”.	10
(2)	Repeal section 47A(1)(a)(ii).	
28	Section 47C amended (Further provisions about detention under section 47A) Repeal section 47C(5)(b).	
	<i>Forfeiture</i>	15
29	Section 57 amended (Further provisions relating to orders under section 55) In section 57(a)(ii) and (b), delete “section 35(2) or”.	
	<i>Investigation and prosecution of offences against Act or referred to in Conventions</i>	20
30	Section 68 amended (Attorney-General to communicate outcome of prosecution) In section 68, after “financing of”, insert “, or provision of material support for”.	
	<i>Extradition</i>	25
31	Section 69 amended (Offences deemed to be included in extradition treaties)	
(1)	In section 69(1) and (3), after “financing of”, insert “, or provision of material support for,” in each place.	
(2)	In section 69(4), after “ relevant date ,”, insert “means,”.	30
(3)	Replace section 69(4)(a) with:	
(a)	in relation to terrorist bombing, 5 December 2002; and	

- (aa) in relation to an offence against **section 8(1A) or (2B)**, the commencement date of the **Counter-Terrorism Legislation Act 2021**; and
- (ab) in relation to any other financing of, or provision of material support for, terrorism, 5 December 2002; and

Repeal of spent provisions 5

32 Cross-heading above section 74 amended

In the cross-heading above section 74, delete “*and saving and transitional provision*”.

33 Sections 76 to 80 and cross-headings repealed

Repeal sections 76 to 80 and the cross-headings above sections 76 to 79. 10

Schedules

34 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

35 New Schedules 4D and 4E inserted 15

After Schedule 4C, insert the **Schedules 4D and 4E** set out in **Schedule 2** of this Act.

36 Schedule 5 amended

In Schedule 5, clauses 2 to 4, delete “financial institution or” in each place.

Part 2 20

Amendments to other Acts

Subpart 1—Substantive amendments to Search and Surveillance Act
2012

37 Amendments to Search and Surveillance Act 2012

This subpart amends the Search and Surveillance Act 2012. 25

38 Section 15 amended (Entry without warrant to find and avoid loss of evidential material relating to certain offences)

In section 15(a), after “an offence punishable by imprisonment for a term of 14 years or more”, insert “or an offence against **section 6B(1)** (terrorist act: planning or other preparations to carry out) of the Terrorism Suppression Act 2002”. 30

- 39 Section 16 amended (Searching people in public place without warrant for evidential material relating to certain offences)**
 In section 16, after “an offence punishable by imprisonment for a term of 14 years or more”, insert “or an offence against **section 6B(1)** (terrorist act: planning or other preparations to carry out) of the Terrorism Suppression Act 2002”. 5
- 40 Section 17 amended (Warrantless entry and search of vehicle for evidential material relating to certain offences)**
 In section 17, after “an offence punishable by imprisonment for a term of 14 years or more”, insert “or an offence against **section 6B(1)** (terrorist act: planning or other preparations to carry out) of the Terrorism Suppression Act 2002”. 10
- 41 Section 48 amended (Surveillance device warrant need not be obtained for use of surveillance device in some situations of emergency or urgency)**
 In section 48(2)(a)(i), after “an offence punishable by a term of imprisonment of 14 years or more”, insert “or an offence against **section 6B(1)** (terrorist act: planning or other preparations to carry out) of the Terrorism Suppression Act 2002”. 15
- Subpart 2—Substantive amendments to Terrorism Suppression (Control Orders) Act 2019 20
- 42 Amendments to Terrorism Suppression (Control Orders) Act 2019**
 This subpart amends the Terrorism Suppression (Control Orders) Act 2019.
- 43 Section 5 amended (Interpretation)**
- (1) In section 5, definition of **relevant person**, replace “section 6” with “**section 6(1AA)**.” 25
- (2) In section 5, insert in their appropriate alphabetical order:
- determinate sentence of imprisonment** means a sentence of imprisonment for a fixed term and that is final, or that is the subject of an appeal unless the sentence is—
- (a) suspended pending determination of the appeal; or 30
- (b) set aside, and not replaced by a sentence of imprisonment for a fixed term, on the appeal
- release conditions**, in relation to 1 or more sentences of imprisonment that are or include a determinate sentence of imprisonment referred to in **section 6(5)(b) and (c)**, has the same meaning as in section 4(1) of the Parole Act 2002 35

relevant offender means a person to whom **section 6(5)** applies (*see section 6(1AA)*)

relevant returner means a person to whom section 6(1) applies (*see section 6(1AA)*)

statutory release date, in relation to 1 or more sentences of imprisonment that are or include a determinate sentence of imprisonment referred to in **section 6(5)(b) and (c)**, has the same meaning as in section 4(1) of the Parole Act 2002

terrorism-related New Zealand offence has the meaning in **section 8A**

44 Section 6 amended (Meaning of relevant person) 10

(1) Above section 6(1), insert:

Definition: relevant returner or relevant offender

(1AA) A **relevant person** means a person who is—

- (a) a person to whom subsection (1) applies (and who, in this Act, is called, under section 5, a relevant returner); or 15
- (b) a person to whom **subsection (5)** applies (and who, in this Act, is called, under section 5, a relevant offender).

Engagement in terrorism-related activities in foreign country

(2) In section 6(1), replace “A relevant person is” with “This subsection applies to”. 20

(3) After section 6(4), insert:

Commission of terrorism-related New Zealand offence punished by determinate sentence of imprisonment

(5) This subsection applies to a person who is 18 years old or older and—

- (a) who, on or after the commencement date of the **Counter-Terrorism Legislation Act 2021**, committed, and was convicted of, a terrorism-related New Zealand offence (*see section 8A*); and 25
- (b) who was sentenced, on or after that commencement date, for that offence, to a determinate sentence of imprisonment; and
- (c) whose statutory release date, or whose last day as an offender who is subject to release conditions, for 1 or more sentences of imprisonment that are or include that determinate sentence of imprisonment, is after that commencement date. 30

45 Section 7 amended (Duty to have regard to specified aspects of evidence relied on) 35

In section 7(1), replace “section 6” with “section 6(1)”.

- 46 New section 8A inserted (Meaning of terrorism-related New Zealand offence)**
- After section 8, insert:
- 8A Meaning of terrorism-related New Zealand offence**
- A **terrorism-related New Zealand offence** means an offence that is— 5
- (a) an offence against the Terrorism Suppression Act 2002 (even if that offence was committed wholly, or partly, outside New Zealand, but is prosecuted in New Zealand under any of sections 15 to 18 of that Act and sections 7, 8, and 8A of the Crimes Act 1961); or
- (b) an offence— 10
- (i) against section 124(1), 127(4), 129(3), or 131A(1) of the Films, Videos, and Publications Classification Act 1993, or section 390 of the Customs and Excise Act 2018; and
- (ii) that involves a publication that is objectionable (as those terms are defined in sections 2 and 3 of the Films, Videos, and Publications Classification Act 1993) for reasons that are or include the extent and degree to which, and the manner in which, the publication (as provided in section 3(3)(d) of that Act) promotes or encourages acts of terrorism. 15
- 47 Section 12 amended (Power to make)** 20
- In section 12(1)(a), replace “sections 6, 7, and 8” with “sections **6(1AA)**, 7, 8, and **8A**”.
- 48 Section 15 amended (Application for interim control order)**
- (1) In the heading to section 15, after “**Application for interim control order**”, insert “**in respect of relevant returner**”. 25
- (2) In section 15(1), (1)(a)(i) and (ii), (1)(b), (2)(a), (2)(a)(ii), (2)(b), (2)(b)(i) and (ii), (3), and (5), replace “person” with “returner” in each place.
- 49 Section 16 amended (Application for final control order)**
- (1) In the heading to section 16, after “**Application for final control order**”, insert “**in respect of relevant returner**”. 30
- (2) In section 16(1), (1)(a), (1)(b), (1)(b)(i), (1)(c), (2)(a), and (3), replace “person” with “returner” in each place.
- 50 New sections 16A and 16B inserted**
- After section 16, insert:

16A Application for interim control order in respect of relevant offender

- (1) The Commissioner may make an application for an interim control order in respect of a relevant offender only if—
- (a) the application is made—
 - (i) after they become a relevant offender; and 5
 - (ii) on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in **section 6(5)(c)**; and
 - (b) the Commissioner believes on reasonable grounds that it is necessary and appropriate that the interim control order is made as soon as practicable in order to manage the real risks posed by the relevant offender of engagement in terrorism-related activities in a country. 10
- (2) The application for the interim control order may be made, and must be heard and determined by the court, without notice to the relevant offender if the Commissioner believes on reasonable grounds that it is necessary and appropriate to make the application, and for it to be heard and determined, without notice in order to manage the real risks posed by the relevant offender of engagement in terrorism-related activities in a country. 15
- (3) If the application for the interim control order is made on notice to the relevant offender, the documents to be served must exclude any information supporting the application that is not disclosable supporting information. 20
- (4) The application for the interim control order must be—
- (a) set down for hearing, and heard, as soon as practicable; and
 - (b) determined as soon as practicable.
- (5) On or after making an interim control order in respect of a relevant offender, the court must consider whether to direct under **section 16B(1)(b)** a period (longer or shorter than 3 months after the date on which the interim order was served on the relevant offender) as the period within which the Commissioner may make an application for a final control order in respect of the relevant offender. 25 30

16B Application for final control order in respect of offender relevant person

- (1) The Commissioner may make an application for a final control order in respect of a relevant offender only if—
- (a) no interim control order in respect of the relevant offender has been applied for, and the application for the final control order is made— 35
 - (i) after they become a relevant offender; and
 - (ii) on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in **section 6(5)(c)**; or

- (b) an interim control order in respect of the relevant offender was applied for and made, and the application for the final control order is made—
- (i) within 3 months after the date on which the interim order was served on the relevant offender; or
 - (ii) within any longer or shorter period the court directs (on its own initiative or on an application for the purpose made) on or after making the interim order and during that 3-month period; or
- (c) an interim control order in respect of the relevant offender was applied for and declined, and the application for the final control order is made—
- (i) after they become a relevant offender; and
 - (ii) on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in **section 6(5)(c)**; and
 - (iii) because of a material change in circumstances since the interim control order was declined.
- (2) The application for the final control order must be—
- (a) made on notice to the relevant offender; and
 - (b) set down for hearing, and heard, as soon as practicable; and
 - (c) determined as soon as practicable.
- (3) Because the application for the final control order is made on notice to the relevant offender, the documents to be served must exclude any information supporting the application that is not disclosable supporting information.

51 Section 21 amended (Service of control order)

- (1) Replace section 21(2)(a) and (b) with:
- (a) if P is a relevant returner, and if practicable, on P’s arrival in New Zealand; or
 - (b) if P is a relevant returner, and if service on P’s arrival in New Zealand is not practicable, as soon as is reasonably practicable after P’s arrival in New Zealand; but
- (2) In section 21(3)(a), after “the same terrorism-related activities in a foreign country”, insert “or, as the case requires, the same terrorism-related New Zealand offence”.
- (3) In section 21(3)(b), after “later and different terrorism-related activities in a foreign country”, insert “or, as the case requires, a later and different terrorism-related New Zealand offence”.

52 Section 25 amended (Duration)

- (1) In section 25(1)(b), after “section 16(1)(b)”, insert “or **16B(1)(b)**”.

- (2) After section 25(4), insert:
- (4A) Those 2 years exclude, for a final control order in respect of a relevant offender, any period on or before their statutory release date, or their last day as an offender who is subject to release conditions, for the 1 or more sentences of imprisonment mentioned in **section 6(5)(c)**. 5
- (3) In section 25(6), after “terrorism-related activities in a foreign country”, insert “or terrorism-related New Zealand offence”.
- 53 Section 29 amended (Expiry if relevant person sentenced to long-term sentence)**
- In section 29(2), after “terrorism-related activities in a foreign country”, insert “or terrorism-related New Zealand offence”. 10
- 54 Section 38 amended (Review of Act)**
- In section 38(1), replace “this Act comes into force” with “the **Counter-Terrorism Legislation Act 2021** comes into force”.
- 55 Schedule 2 amended** 15
- In Schedule 2, replace “**sections 6, 7, and 8(1)**” with “**sections 6(1AA), 7, 8, and 8A**”.
- Subpart 3—Consequential amendments related to Part 1
- 56 Consequential amendments to other enactments**
- Amend the enactments specified in **Schedule 3** as set out in that schedule. 20

Schedule 1
New Schedule 1AA inserted

s 34

Schedule 1AA
Transitional, savings, and related provisions

5

s 5B

Part 1
Provisions relating to Counter-Terrorism Legislation Act 2021

1 Definitions

In this Part,—

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Amendment Act means the **Counter-Terrorism Legislation Act 2021**

commencement means the commencement of the Amendment Act.

2 Amendments apply only to conduct after commencement

The amendments made by the Amendment Act apply only to conduct after the commencement.

15

Schedule 2
New Schedules 4D and 4E inserted

s 35

Schedule 4D

United Nations Security Council Resolution 2178 (2014)

5

s 4

Resolution 2178 (2014)**Adopted by the Security Council at its 7272nd meeting, on 24 September 2014***The Security Council,*

Reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed, and *remaining* determined to contribute further to enhancing the effectiveness of the overall effort to fight this scourge on a global level, 10

Noting with concern that the terrorism threat has become more diffuse, with an increase, in various regions of the world, of terrorist acts including those motivated by intolerance or extremism, and *expressing* its determination to combat this threat, 15

Bearing in mind the need to address the conditions conducive to the spread of terrorism, and *affirming* Member States' determination to continue to do all they can to resolve conflict and to deny terrorist groups the ability to put down roots and establish safe havens to address better the growing threat posed by terrorism, 20

Emphasizing that terrorism cannot and should not be associated with any religion, nationality or civilization,

Recognizing that international cooperation and any measures taken by Member States to prevent and combat terrorism must comply fully with the Charter of the United Nations, 25

Reaffirming its respect for the sovereignty, territorial integrity and political independence of all States in accordance with the Charter,

Reaffirming that Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law, *underscoring* that respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort and notes the importance of respect for the rule of law so as to effectively prevent and combat terrorism, and *noting* that failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization and fosters a sense of impunity, 30
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Expressing grave concern over the acute and growing threat posed by foreign terrorist fighters, namely individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict, and *resolving* to address this threat,

5

Expressing grave concern about those who attempt to travel to become foreign terrorist fighters,

Concerned that foreign terrorist fighters increase the intensity, duration and intractability of conflicts, and also may pose a serious threat to their States of origin, the States they transit and the States to which they travel, as well as States neighbouring zones of armed conflict in which foreign terrorist fighters are active and that are affected by serious security burdens, and *noting* that the threat of foreign terrorist fighters may affect all regions and Member States, even those far from conflict zones, and *expressing* grave concern that foreign terrorist fighters are using their extremist ideology to promote terrorism,

10

15

Expressing concern that international networks have been established by terrorists and terrorist entities among States of origin, transit and destination through which foreign terrorist fighters and the resources to support them have been channelled back and forth,

Expressing particular concern that foreign terrorist fighters are being recruited by and are joining entities such as the Islamic State in Iraq and the Levant (ISIL), the Al-Nusra Front (ANF) and other cells, affiliates, splinter groups or derivatives of Al-Qaida, as designated by the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011), *recognizing* that the foreign terrorist fighter threat includes, among others, individuals supporting acts or activities of Al-Qaida and its cells, affiliates, splinter groups, and derivative entities, including by recruiting for or otherwise supporting acts or activities of such entities, and *stressing* the urgent need to address this particular threat,

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Recognizing that addressing the threat posed by foreign terrorist fighters requires comprehensively addressing underlying factors, including by preventing radicalization to terrorism, stemming recruitment, inhibiting foreign terrorist fighter travel, disrupting financial support to foreign terrorist fighters, countering violent extremism, which can be conducive to terrorism, countering incitement to terrorist acts motivated by extremism or intolerance, promoting political and religious tolerance, economic development and social cohesion and inclusiveness, ending and resolving armed conflicts, and facilitating reintegration and rehabilitation,

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Recognizing also that terrorism will not be defeated by military force, law enforcement measures, and intelligence operations alone, and *underlining* the need to address the conditions conducive to the spread of terrorism, as outlined in Pillar I of the United Nations Global Counter-Terrorism Strategy (A/RES/60/288),

40

Expressing concern over the increased use by terrorists and their supporters of communications technology for the purpose of radicalizing to terrorism, recruiting and

inciting others to commit terrorist acts, including through the internet, and financing and facilitating the travel and subsequent activities of foreign terrorist fighters, and *underlining* the need for Member States to act cooperatively to prevent terrorists from exploiting technology, communications and resources to incite support for terrorist acts, while respecting human rights and fundamental freedoms and in compliance with other obligations under international law, 5

Noting with appreciation the activities undertaken in the area of capacity building by United Nations entities, in particular entities of the Counter-Terrorism Implementation Task Force (CTITF), including the United Nations Office of Drugs and Crime (UNODC) and the United Nations Centre for Counter-Terrorism (UNCCT), and also the efforts of the Counter Terrorism Committee Executive Directorate (CTED) to facilitate technical assistance, specifically by promoting engagement between providers of capacity-building assistance and recipients, in coordination with other relevant international, regional and subregional organizations, to assist Member States, upon their request, in implementation of the United Nations Global Counter-Terrorism Strategy, 10 15

Noting recent developments and initiatives at the international, regional and subregional levels to prevent and suppress international terrorism, and *noting* the work of the Global Counterterrorism Forum (GCTF), in particular its recent adoption of a comprehensive set of good practices to address the foreign terrorist fighter phenomenon, and its publication of several other framework documents and good practices, including in the areas of countering violent extremism, criminal justice, prisons, kidnapping for ransom, providing support to victims of terrorism, and community-oriented policing, to assist interested States with the practical implementation of the United Nations counter-terrorism legal and policy framework and to complement the work of the relevant United Nations counter-terrorism entities in these areas, 20 25

Noting with appreciation the efforts of INTERPOL to address the threat posed by foreign terrorist fighters, including through global law enforcement information sharing enabled by the use of its secure communications network, databases, and system of advisory notices, procedures to track stolen, forged identity papers and travel documents, and INTERPOL's counter-terrorism fora and foreign terrorist fighter programme, 30

Having regard to and highlighting the situation of individuals of more than one nationality who travel to their states of nationality for the purpose of the perpetration, planning, preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and *urging* States to take action, as appropriate, in compliance with their obligations under their domestic law and international law, including international human rights law, 35

Calling upon States to ensure, in conformity with international law, in particular international human rights law and international refugee law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, including by foreign terrorist fighters, 40

Reaffirming its call upon all States to become party to the international counter-terrorism conventions and protocols as soon as possible, whether or not they are a party to regional conventions on the matter, and to fully implement their obligations under those to which they are a party,

Noting the continued threat to international peace and security posed by terrorism, and *affirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts, including those perpetrated by foreign terrorist fighters,

Acting under Chapter VII of the Charter of the United Nations,

1. *Condemns* the violent extremism, which can be conducive to terrorism, sectarian violence, and the commission of terrorist acts by foreign terrorist fighters, and *demands* that all foreign terrorist fighters disarm and cease all terrorist acts and participation in armed conflict; 10
2. *Reaffirms* that all States shall prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents, *underscores*, in this regard, the importance of addressing, in accordance with their relevant international obligations, the threat posed by foreign terrorist fighters, and *encourages* Member States to employ evidence-based traveller risk assessment and screening procedures including collection and analysis of travel data, without resorting to profiling based on stereotypes founded on grounds of discrimination prohibited by international law; 15
20
3. *Urges* Member States, in accordance with domestic and international law, to intensify and accelerate the exchange of operational information regarding actions or movements of terrorists or terrorist networks, including foreign terrorist fighters, especially with their States of residence or nationality, through bilateral or multilateral mechanisms, in particular the United Nations; 25
4. *Calls upon* all Member States, in accordance with their obligations under international law, to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing the radicalization to terrorism and recruitment of foreign terrorist fighters, including children, preventing foreign terrorist fighters from crossing their borders, disrupting and preventing financial support to foreign terrorist fighters, and developing and implementing prosecution, rehabilitation and reintegration strategies for returning foreign terrorist fighters; 30
35
5. *Decides* that Member States shall, consistent with international human rights law, international refugee law, and international humanitarian law, prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the 40

- purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities;
6. *Recalls* its decision, in resolution 1373 (2001), that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and *decides* that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense:
- (a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;
 - (b) the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and,
 - (c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;
7. *Expresses* its strong determination to consider listing pursuant to resolution 2161 (2014) individuals, groups, undertakings and entities associated with Al-Qaida who are financing, arming, planning, or recruiting for them, or otherwise supporting their acts or activities, including through information and communications technologies, such as the internet, social media, or any other means;
8. *Decides* that, without prejudice to entry or transit necessary in the furtherance of a judicial process, including in furtherance of such a process related to arrest or detention of a foreign terrorist fighter, Member States shall prevent the entry into or transit through their territories of any individual about whom that State has credible information that provides reasonable grounds to believe that he or she is seeking entry into or transit through their territory for the purpose of participating in the acts described in paragraph 6, including any acts or activities indicating that an individual, group, undertaking or entity is associated with Al-

Qaida, as set out in paragraph 2 of resolution 2161 (2014), provided that nothing in this paragraph shall oblige any State to deny entry or require the departure from its territories of its own nationals or permanent residents;

9. *Calls upon* Member States to require that airlines operating in their territories provide advance passenger information to the appropriate national authorities in order to detect the departure from their territories, or attempted entry into or transit through their territories, by means of civil aircraft, of individuals designated by the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) (“the Committee”), and further *calls upon* Member States to report any such departure from their territories, or such attempted entry into or transit through their territories, of such individuals to the Committee, as well as sharing this information with the State of residence or nationality, as appropriate and in accordance with domestic law and international obligations; 5 10
10. *Stresses* the urgent need to implement fully and immediately this resolution with respect to foreign terrorist fighters, *underscores* the particular and urgent need to implement this resolution with respect to those foreign terrorist fighters who are associated with ISIL, ANF and other cells, affiliates, splinter groups or derivatives of Al-Qaida, as designated by the Committee, and *expresses* its readiness to consider designating, under resolution 2161 (2014), individuals associated with Al-Qaida who commit the acts specified in paragraph 6 above; 15 20

International Cooperation

11. *Calls upon* Member States to improve international, regional, and subregional cooperation, if appropriate through bilateral agreements, to prevent the travel of foreign terrorist fighters from or through their territories, including through increased sharing of information for the purpose of identifying foreign terrorist fighters, the sharing and adoption of best practices, and improved understanding of the patterns of travel by foreign terrorist fighters, and for Member States to act cooperatively when taking national measures to prevent terrorists from exploiting technology, communications and resources to incite support for terrorist acts, while respecting human rights and fundamental freedoms and in compliance with other obligations under international law; 25 30
12. *Recalls* its decision in resolution 1373 (2001) that Member States shall afford one another the greatest measure of assistance in connection with criminal investigations or proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings, and *underlines* the importance of fulfilling this obligation with respect to such investigations or proceedings involving foreign terrorist fighters; 35
13. *Encourages* Interpol to intensify its efforts with respect to the foreign terrorist fighter threat and to recommend or put in place additional resources to support 40

- and encourage national, regional and international measures to monitor and prevent the transit of foreign terrorist fighters, such as expanding the use of INTERPOL Special Notices to include foreign terrorist fighters;
14. *Calls upon* States to help build the capacity of States to address the threat posed by foreign terrorist fighters, including to prevent and interdict foreign terrorist fighter travel across land and maritime borders, in particular the States neighbouring zones of armed conflict where there are foreign terrorist fighters, and *welcomes* and *encourages* bilateral assistance by Member States to help build such national capacity; 5
- Countering Violent Extremism in Order to Prevent Terrorism* 10
15. *Underscores* that countering violent extremism, which can be conducive to terrorism, including preventing radicalization, recruitment, and mobilization of individuals into terrorist groups and becoming foreign terrorist fighters is an essential element of addressing the threat to international peace and security posed by foreign terrorist fighters, and *calls upon* Member States to enhance efforts to counter this kind of violent extremism; 15
16. *Encourages* Member States to engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite terrorist acts, address the conditions conducive to the spread of violent extremism, which can be conducive to terrorism, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society and adopt tailored approaches to countering recruitment to this kind of violent extremism and promoting social inclusion and cohesion; 20
17. *Recalls* its decision in paragraph 14 of resolution 2161 (2014) with respect to improvised explosive devices (IEDs) and individuals, groups, undertakings and entities associated with Al-Qaida, and *urges* Member States, in this context, to act cooperatively when taking national measures to prevent terrorists from exploiting technology, communications and resources, including audio and video, to incite support for terrorist acts, while respecting human rights and fundamental freedoms and in compliance with other obligations under international law; 25
30
18. *Calls upon* Member States to cooperate and consistently support each other's efforts to counter violent extremism, which can be conducive to terrorism, including through capacity building, coordination of plans and efforts, and sharing lessons learned; 35
19. *Emphasizes* in this regard the importance of Member States' efforts to develop non-violent alternative avenues for conflict prevention and resolution by affected individuals and local communities to decrease the risk of radicaliza-

tion to terrorism, and of efforts to promote peaceful alternatives to violent narratives espoused by foreign terrorist fighters, and *underscores* the role education can play in countering terrorist narratives;

United Nations Engagement on the Foreign Terrorist Fighter Threat

20. *Notes* that foreign terrorist fighters and those who finance or otherwise facilitate their travel and subsequent activities may be eligible for inclusion on the Al-Qaida Sanctions List maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) where they participate in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of, Al-Qaida, supplying, selling or transferring arms and related materiel to, or recruiting for, or otherwise supporting acts or activities of Al-Qaida or any cell, affiliate, splinter group or derivative thereof, and *calls upon* States to propose such foreign terrorist fighters and those who facilitate or finance their travel and subsequent activities for possible designation; 5 10 15
21. *Directs* the Committee established pursuant to resolution 1267 (1999) and 1989 (2011) and the Analytical Support and Sanctions Monitoring Team, in close cooperation with all relevant United Nations counter-terrorism bodies, in particular CTED, to devote special focus to the threat posed by foreign terrorist fighters recruited by or joining ISIL, ANF and all groups, undertakings and entities associated with Al-Qaida; 20
22. *Encourages* the Analytical Support and Sanctions Monitoring Team to coordinate its efforts to monitor and respond to the threat posed by foreign terrorist fighters with other United Nations counter-terrorism bodies, in particular the CTITF; 25
23. *Requests* the Analytical Support and Sanctions Monitoring Team, in close cooperation with other United Nations counter-terrorism bodies, to report to the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) within 180 days, and provide a preliminary oral update to the Committee within 60 days, on the threat posed by foreign terrorist fighters recruited by or joining ISIL, ANF and all groups, undertakings and entities associated with Al-Qaida, including: 30
- (a) a comprehensive assessment of the threat posed by these foreign terrorist fighters, including their facilitators, the most affected regions and trends in radicalization to terrorism, facilitation, recruitment, demographics, and financing; and 35
 - (b) recommendations for actions that can be taken to enhance the response to the threat posed by these foreign terrorist fighters;

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24. *Requests* the Counter-Terrorism Committee, within its existing mandate and with the support of CTED, to identify principal gaps in Member States' capacities to implement Security Council resolutions 1373 (2001) and 1624 (2005) that may hinder States' abilities to stem the flow of foreign terrorist fighters, as well as to identify good practices to stem the flow of foreign terrorist fighters in the implementation of resolutions 1373 (2001) and 1624 (2005), and to facilitate technical assistance, specifically by promoting engagement between providers of capacity-building assistance and recipients, especially those in the most affected regions, including through the development, upon their request, of comprehensive counter-terrorism strategies that encompass countering violent radicalization and the flow of foreign terrorist fighters, recalling the roles of other relevant actors, for example the Global Counterterrorism Forum; 5
10
25. *Underlines* that the increasing threat posed by foreign terrorist fighters is part of the emerging issues, trends and developments related to resolutions 1373 (2001) and 1624 (2005), that, in paragraph 5 of resolution 2129 (2013), the Security Council directed CTED to identify, and therefore merits close attention by the Counter-Terrorism Committee, consistent with its mandate; 15
26. *Requests* the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) and the Counter-Terrorism Committee to update the Security Council on their respective efforts pursuant to this resolution; 20
27. *Decides* to remain seized of the matter.

Schedule 4E

Applicable maximum penalties for offence against section 13F(1)

s 13F(5)

Item	Offence against	Maximum penalty
1	Section 13F(3)(a) — section 6A (terrorist act: credible threat and carrying out (but excluding an attempt))	Imprisonment for a term not exceeding 10 years
2	Section 13F(3)(b) — section 6B (terrorist act: planning or other preparations to carry out)	Imprisonment for a term not exceeding 3 years and 6 months
3	Section 13F(3)(c) — section 7 (terrorist bombing)	Imprisonment for a term not exceeding 10 years
4	Section 13F(3)(d) — section 8 (financing of, or provision of material support for, terrorism)	Imprisonment for a term not exceeding— (a) 7 years, if the mental element under section 8(1)(d), (1A)(d), (2A)(d), or (2B)(d) is intention; or (b) 5 years, if the mental element under section 8(1)(d), (1A)(d), (2A)(d), or (2B)(d) is knowledge or recklessness
5	Section 13F(3)(e) — section 9 (prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity)	Imprisonment for a term not exceeding 3 years and 6 months
6	Section 13F(3)(f) — section 10 (prohibition on making property, or material support, available to designated terrorist entity)	Imprisonment for a term not exceeding 5 years
7	Section 13F(3)(g) — section 12 (recruiting members of terrorist groups)	Imprisonment for a term not exceeding 7 years
8	Section 13F(3)(h) — section 13 (participating in terrorist groups)	Imprisonment for a term not exceeding 7 years
9	Section 13F(3)(i) — section 13AA (providing or receiving weapons training or combat training for terrorist purposes)	Imprisonment for a term not exceeding 3 years and 6 months
10	Section 13F(3)(j) — section 13A (harbouring or concealing terrorists)	Imprisonment for a term not exceeding 3 years and 6 months
11	Section 13F(3)(k) — section 13B (offences involving use and movement of unmarked plastic explosives)	Imprisonment for a term not exceeding 5 years or a fine not exceeding \$250,000, or both

Item	Offence against	Maximum penalty
12	Section 13F(3)(l) — section 13C (offences involving physical protection of nuclear material)	Imprisonment for a term not exceeding 5 years or a fine not exceeding \$250,000, or both
13	Section 13F(3)(m) — section 13D (importation, acquisition, etc, of radioactive material)	Imprisonment for a term not exceeding 5 years
14	Section 13F(3)(n) — section 13E (offences involving radioactive material and radioactive devices)	Imprisonment for a term not exceeding 5 years or a fine not exceeding \$250,000, or both

Schedule 3

Consequential amendments

s 56

Charities Act 2005 (2005 No 39)

In section 13(5)(b), replace “13E” with “**13F**”. 5

Crimes Act 1961 (1961 No 43)

In section 7A(1), replace “(as defined in section 5(1) of the Terrorism Suppression Act 2002)” with “(within the meanings of those terms or expressions in sections 5 and **5A** of the Terrorism Suppression Act 2002)”.

In section 7B(3), replace “(as defined in section 5(1) of the Terrorism Suppression Act 2002)” with “(within the meanings of those terms or expressions in sections 5 and **5A** of the Terrorism Suppression Act 2002)”. 10

Criminal Investigations (Bodily Samples) Act 1995 (1995 No 55)

In Schedule 1, Part 2, item relating to section 8 of the Terrorism Suppression Act 2002, replace “Financing of terrorism” with “Financing of, or provision of material support for, terrorism”. 15

Criminal Procedure Act 2011 (2011 No 81)

In Schedule 1, Part 2, replace the item relating to the Terrorism Suppression Act 2002 with:

Terrorism Suppression Act 2002	20
Section	Offence
Section 6A	Terrorist act: credible threat, attempt, and carrying out
Section 6B	Terrorist act: planning or other preparations to carry out
Section 7	Terrorist bombing
Section 8	Financing of, or provision of material support for, terrorism
Section 9	Prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity
Section 10	Prohibition on making property, or material support, available to designated terrorist entity
Section 12	Recruiting members of terrorist groups
Section 13	Participating in terrorist groups
Section 13AA	Providing or receiving weapons or combat training for terrorist purposes
Section 13A	Harbouring or concealing terrorists
Section 13B	Offences involving use and movement of unmarked plastic explosives
Section 13C	Offences involving physical protection of nuclear material
Section 13D	Importation, acquisition, etc, of radioactive material
Section 13E	Offences involving radioactive material and radioactive devices
Section 13F	Travelling intending to commit specified offence

Criminal Proceeds (Recovery) Act 2009 (2009 No 8)

In section 5(1), definition of **instrument of crime**, replace paragraph (b) with:

- (b) in relation to a qualifying instrument forfeiture offence that is an offence against **section 8(1), (1A), (2A), or (2B)** of the Terrorism Suppression Act 2002, includes funds (as defined in section 4(1) of that Act) allocated for the purposes of committing that offence; and 5

Financial Service Providers (Registration and Dispute Resolution) Act 2008 (2008 No 97)

Replace section 14(2)(f) with:

- (f) a person who has been convicted of a money laundering offence or an offence relating to the financing of, or provision of material support for, terrorism, whether in New Zealand or elsewhere: 10

Immigration Act 2009 (2009 No 51)

In section 303A(5), definition of **person of interest**, replace paragraph (a) with:

- (a) poses a threat or risk to the security of New Zealand or another country because the person intends to— 15
- (i) carry out, or facilitate, a terrorist act (within the meanings of those terms or expressions in sections 5 and **5A** of the Terrorism Suppression Act 2002); or
 - (ii) engage in, or facilitate, the proliferation of weapons of mass destruction; or 20
 - (iii) engage in, or facilitate, any other unlawful activity designed or likely to cause serious economic damage to New Zealand, carried out for the purpose of commercial or economic gain; or

Oranga Tamariki Act 1989 (1989 No 24) 25

In Schedule 1A, replace the item relating to the Terrorism Suppression Act 2002, section 6A, with:

Terrorist act: credible threat and carrying out (but excluding an attempt)	Terrorism Suppression Act 2002, section 6A(1) (but excluding an attempt)
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In Schedule 1A, replace the item relating to the Terrorism Suppression Act 2002, section 8, with:

Financing of, or provision of material support for, terrorism	Terrorism Suppression Act 2002, section 8(1), (1A), (2A), or (2B)
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Passports Act 1992 (1992 No 92) 30

Replace section 27GA(1)(a) with:

- (a) the person is a danger to the security of New Zealand because the person intends to—

Passports Act 1992 (1992 No 92)—*continued*

- (i) carry out, or facilitate, a terrorist act (within the meanings of those terms or expressions in sections 5 and **5A** of the Terrorism Suppression Act 2002); or
- (ii) engage in, or facilitate, the proliferation of weapons of mass destruction; or
- (iii) engage in, or facilitate, any other unlawful activity designed or likely to cause serious economic damage to New Zealand, carried out for the purpose of commercial or economic gain; and

5

Replace section 27GA(2)(a) with:

- (a) the person is a danger to the security of a country other than New Zealand because the person intends to—
 - (i) carry out, or facilitate, a terrorist act (within the meanings of those terms or expressions in sections 5 and **5A** of the Terrorism Suppression Act 2002); or
 - (ii) engage in, or facilitate, the proliferation of weapons of mass destruction; and

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Replace section 29AA(1)(c)(i) with:

- (i) the person concerned was a danger to the security of New Zealand or another country because the person intended to carry out, engage in, or facilitate, an activity of a kind described in **section 27GA(1)(a) or (2)(a)**; and

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Replace section 29AA(2)(b)(i) with:

- (i) the person concerned is a danger to the security of New Zealand or another country because the person intends to carry out, engage in, or facilitate, an activity of a kind described in **section 27GA(1)(a) or (2)(a)**; and

25

Replace section 29AA(5)(a)(i) with:

- (i) the person concerned is a danger to the security of New Zealand or another country because the person intends to carry out, engage in, or facilitate, an activity of a kind described in **section 27GA(1)(a) or (2)(a)**; and

30

Sentencing Act 2002 (2002 No 9)

In section 4(1), definition of **instrument of crime**, replace paragraph (b) with:

- (b) in relation to a qualifying instrument forfeiture offence that is an offence against **section 8(1), (1A), (2A), or (2B)** of the Terrorism Suppression Act 2002, includes funds (as defined in section 4(1) of that Act) allocated for the purposes of committing that offence; and

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Counter-Terrorism Legislation Bill

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