

**Legislative Statement
for the
Counter-Terrorism Acts (Designations and Control Orders)
Amendment Bill**

Third Reading

Presented to the House of Representatives

In accordance with Standing Order 272

Legislative Statement for the Counter-Terrorism Acts (Designations and Control Orders) Amendment Bill

Introduction

- 1 The purpose of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Bill 2022 (**Bill**) is to clarify and strengthen New Zealand's counter-terrorism legislation, in order to better prevent and respond to terrorism and associated activities.
- 2 The Bill amends two aspects of New Zealand's counter-terrorism legislation:
 - a) the scheme for designating terrorist entities in the Terrorism Suppression Act 2002 (**TSA**) — these amendments are to clarify ambiguities in the law relating to designated terrorist entities who are imprisoned; and
 - b) the control orders regime in the Terrorism Suppression (Control Orders) Act 2019 (**TSCOA**) — these amendments strengthen and improve the regime, incorporating some of the lessons learned from the granting of New Zealand's first and (to date) only control order.

Background

- 3 The Royal Commission of Inquiry into the Terrorist Attack on Christchurch Masjidain on 15 March 2019 (**Royal Commission**) recommended that the government review all counter-terrorism legislation to ensure it is fit for purpose.
- 4 In the early stages of this review, officials identified ambiguities in how the TSA's scheme for designating terrorist entities applied with respect to individuals who are designated and imprisoned.
- 5 Additionally, evolving terrorism threat and risk in New Zealand, as well as the experience of making New Zealand's first and only control order, has highlighted ways in which the control orders regime could be strengthened to ensure it is fit for purpose.
- 6 To address these issues, the Bill amends two aspects of New Zealand's counter-terrorism legislation. These amendments will ensure that designation and control order provisions apply effectively to terrorism and associated activities.
- 7 The amendments in the Bill balance enhancing our ability to prevent and respond to terrorism in order to protect public safety, with the individual rights and freedoms recognised in the New Zealand Bill of Rights Act 1990.

Legislative amendments

Amendments to the Terrorism Suppression Act 2002

- 8 The designation scheme of the TSA provides a framework to prevent further terrorist acts. Under the TSA's designation scheme:
- a) the Prime Minister is empowered to designate a terrorist entity if they believe on reasonable grounds that the entity has carried out, or participated in the carrying out of, a terrorist act;
 - b) a designation has consequences designed to prevent further terrorist acts, including prohibiting third parties from dealing with the property of a designated entity or making property or material support available to the entity;
 - c) designations expire after three years, unless renewed; and
 - d) at any time, a designated entity or interested third party may apply for the designation to be revoked.
- 9 The Bill amends the current designation scheme to clarify matters relating to the expiry, renewal and revocation of designations. The current designations scheme does not specifically address the circumstance of a designated person who is imprisoned in New Zealand. That means there is ambiguity in how the designation scheme applies to such persons.
- 10 The Bill's amendments clarify the TSA's designations scheme to ensure it applies to people who are imprisoned and remain a threat of being involved in further terrorist acts. Specifically, the Bill amends the TSA so that, in the case of a designated entity who is the subject of a final designation and is imprisoned:
- a) while the entity is imprisoned, no application for revocation of the designation can be made (by the entity or by a third party with a special interest) on the ground that the entity is no longer involved in any way in acts of the kind that made, or that would make, the entity eligible for designation;
 - b) expiry of the designation is paused while the entity is imprisoned;
 - c) while the entity is imprisoned, the Prime Minister must review every three years whether the designation is no longer justified; and
 - d) in carrying out the review, the Prime Minister may decide a designation is no longer justified only if satisfied that none of its effects is necessary or desirable to prevent or suppress terrorism.
- 11 These new provisions retain the current designation scheme's structure and safeguards but amend them where necessary to better align with the situation of a designated and imprisoned individual. Specifically:
- a) the expiry of a designation is maintained but paused;
 - b) the 3-yearly review function is maintained but the grounds are amended to be based on whether the effects are necessary or desirable to prevent or suppress terrorism; and

- c) the designated entity retains their ability to challenge the designation but this is incorporated into the review function rather than a stand-alone ability to apply for revocation.
- 12 The amendments to the TSA have retrospective effect in 3 ways:
- a) The amendments apply to designations of terrorist entities that are in force when the Bill comes into force.
 - b) An application for revocation of a final designation that relates to a designated entity who is imprisoned, and was made on the ground that the entity is no longer involved in any way in acts of the kind that made (or that would make) the entity eligible for designation (**revocation application**), is to be determined under the law as amended if the application is made, but not determined, before the Bill comes into force. That means that a revocation application that is 'live' at the time the Bill comes into force can be refused or not decided.
 - c) Any previous decision of the Prime Minister to refuse a revocation application that was made before the Bill comes into force is validated. That means that such a decision is valid after the Bill comes into force, even if it was previously invalid.
- 13 The retrospective effect of these provisions is to protect public safety. If the provisions did not apply retrospectively, the ambiguity in the current law could result in a designation expiring or being revoked despite a designated person continuing to pose a risk of involvement in further terrorist acts.

Amendments to the Terrorism Suppression (Control Orders) Act 2019

- 14 Control orders are civil orders that impose restrictions on people in the community who pose a real risk of carrying-out terrorism related activities when detention is not available. They are analogous to other post-sentence orders for serious sexual or violent offenders, such as extended supervision orders and public protection orders.
- 15 Depending on the specific restrictions imposed, a control order may limit an individual's rights to be free from retroactive penalties and double jeopardy, along with the freedoms of expression, movement, and association. However, the regime includes several protections to ensure this is only done when necessary and only where the limitation is proportionate to the public safety risks.
- 16 A control order can only be imposed when the High Court is satisfied (on the balance of probabilities) that the two-stage test set out in the TSCOA is met. In the case of people in New Zealand, this requires that the person has previously been convicted of a specified offence related to terrorism and the person continues to pose a real risk of engaging in terrorism-related activities.
- 17 The Bill proposes targeted extensions to the control orders regime to more effectively respond to the evolving terrorism risk in New Zealand. It also incorporates some of the lessons learned through making New Zealand's first and only control order.
- 18 The Bill amend the TSCOA to:

- a) include a broader range of objectionable publications in the eligibility test for a control order due to their link to terrorism,¹
- b) extend the eligibility threshold for a control order to include people sentenced to home detention or a community-based sentence for a specified offence and enabling the concurrence of control orders and post-sentence conditions,
- c) give judges greater discretion when setting control order requirements,
- d) adjust the current automatic name suppression requirement, and
- e) clarify the protocols for the management of electronic monitoring requirements.

19 These changes will only apply prospectively.

¹ Objectionable materials are classified using range of criteria, set out in section 3 of the Films, Videos, and Publication Classification Act 1993. Under the current control orders regime, only objectionable publications classified using the criterion “promotes or encourages criminal acts or acts of terrorism” are included in the list of offences for control order eligibility. The Bill proposes two additional criteria.