

Terrorism Suppression Amendment Bill (No 2)

Government Bill

Explanatory note

General policy statement

The Terrorism Suppression Amendment Bill (No 2) 2004, which amends the Terrorism Suppression Act 2002 (“the principal Act”), contains 3 matters.

The Bill creates a new offence relating to terrorist financing. This amendment is necessary to ensure that New Zealand fully complies with international standards for counter terrorist financing, as set and assessed by the Financial Action Task Force on Money Laundering (FATF), an internationally acknowledged standard setter.

While the Act currently prohibits the financing of designated terrorist organisations, or financing that is known or intended to be used for the purpose of carrying out terrorist acts, it may not cover general financial support (ie, not directly linked to a specific terrorist act) to an organisation that is involved in terrorism (eg, the payment of general routine expenses such as rent, etc).

To address this potential loophole, the Bill creates a new offence, as *new section 8(2A)* of the principal Act, that will criminalise the provision of general financial support to all terrorist organisations, whether designated or not.

There is a related technical amendment to change an existing reference from the “Chief Justice” to the “Chief High Court Judge”. Section 38(3) of the principal Act states that, if information presented or proposed to be presented in support of an application to the High Court includes classified security information, the proceedings must be heard and determined by the Chief Justice, or by 1 or more Judges nominated by the Chief Justice, or both. With the

creation of the Supreme Court (and the Chief Justice's membership of it) it is now more appropriate to specify the Chief High Court Judge.

Finally, the principal Act provides that a designation as a terrorist entity expires 3 years after the date on which it took effect (section 23(g)). The principal Act also provides in section 70 for a review of certain of its provisions by a select committee, which is to report by 1 December 2005. The 318 designations of Al Qaida and Taliban related terrorist entities made in 2002 in compliance with a UN Security Council Resolution will expire in October 2005, unless each designation is extended by the High Court.

The Government believes that the process contained in the current Act for extending designations should be re-examined during the select committee review in light of international developments. The current timing of that review will not allow any changes to be made to the procedures before the first designations need to be considered by the High Court. It is desirable that the same procedure apply to all applications for renewal under the Act.

This Bill therefore provides for an extension of the designations for 2 years after the date on which the select committee reports to Parliament. This timeframe will enable the select committee to complete its consideration and report, and for any resulting changes to the legislation to be implemented.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to principal Act

Clause 3 amends the definition of **financing of terrorism** in section 4(1) of the principal Act to include the additional financing of the terrorism offence created by *clause 4*.

Clause 4 amends section 8 of the principal Act, which prohibits the financing of terrorism. The clause creates an additional financing of terrorism offence to prohibit a person providing or collecting funds for entities that carry out, or participate in the carrying out of, terrorist acts. The offence is committed if the funds provided or

collected are intended or known to benefit the entity and if the entity is known to carry out, or to participate in the carrying out of, terrorist acts. This new offence is in addition to the existing financing of terrorism offence set out in section 8(1) of the principal Act, under which it is an offence for a person to provide or collect funds intending that they be used, or knowing that they are to be used, to carry out terrorist acts.

Clause 5 amends section 38(3) of the principal Act, which requires the Chief Justice or Judges nominated by the Chief Justice to hear applications that involve classified security information. The effect of the amendment is to assign the responsibility for such applications to the Chief High Court Judge.

Part 2

Extension of existing designations and consequential amendments

Clause 6 extends the period for which certain entities have been designated, under section 22 of the principal Act, as terrorist entities or associated entities. Under the principal Act, a designation expires 3 years after it is made unless it is extended by an order of the High Court. *Clause 6* affects designations that would have expired in the period starting with the commencement of the Bill and ending 2 years after the date of the report by the select committee charged with reviewing the principal Act. The end of that period constitutes the new expiry for affected designations. The select committee to be charged with reviewing the principal Act must, in accordance with section 70(3) of the principal Act, report before 1 December 2005.

Clauses 7 and 8 make consequential amendments to other Acts.

Hon Phil Goff

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Contents

1	Title		
2	Commencement	7	<i>Consequential amendments</i>
	Part 1		
	Amendments to principal Act		
3	Interpretation		
4	Financing of terrorism		
5	Procedure on applications (and on appeals from decisions) under section 35 or section 55	8	Amendment to Proceeds of Crime Act 1991
	Part 2		
	Extension of existing designations and consequential amendments		
	<i>Extension of existing designations under section 22 of principal Act</i>		
6	Extension of certain designations under principal Act		

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Terrorism Suppression Amendment Act (No 2) **2004.**
- (2) In this Act, the Terrorism Suppression Act 2002¹ is called “the principal Act”. 5

¹ 2002 No 34

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1 Amendments to principal Act

3 Interpretation

Paragraph (a) of the definition of **financing of terrorism** in section 4(1) of the principal Act is amended by omitting the expression “section 8(1)”, and substituting the expression “section 8(1) or **(2A)**”. 5

4 Financing of terrorism

Section 8 of the principal Act is amended by inserting, after subsection (2), the following subsection: 10

“(2A) A person commits an offence who, directly or indirectly, wilfully and without lawful justification or reasonable excuse, provides or collects funds intending that they benefit, or knowing that they will benefit, an entity that the person knows is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.” 15

5 Procedure on applications (and on appeals from decisions) under section 35 or section 55

Section 38(3) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph: 20

“(a) the proceedings must be heard and determined by the Chief High Court Judge, or by 1 or more Judges nominated by the Chief High Court Judge, or both; and”.

Part 2 Extension of existing designations and consequential amendments 25

Extension of existing designations under section 22 of principal Act

6 Extension of certain designations under principal Act

(1) In this section, **specified period** means the period that commences on the day after the date on which this Act receives the Royal assent and ends on the close of the day that is 2 years after the date on which, under section 70(3) of the principal Act, the select committee concerned reports to the House of Representatives. 30 35

(2) **Subsection (3)** applies to a designation under section 22 of the principal Act that would, but for that subsection, have expired in the specified period.

- (3) A designation to which this subsection applies does not expire 3 years after the date on which it took effect but continues in effect until the close of the last day of the specified period.
- (4) **Subsection (3)**—
- (a) overrides section 23(g) and section 35(1) of the principal Act; but 5
- (b) is subject to sections 33 and 34 of that Act.
- (5) In relation to a designation to which **subsection (3)** applies, the principal Act has, throughout the specified period, effect as if,— 10
- (a) for the words “3 years after the date on which it took effect” in section 23(g) of the principal Act, there were substituted the words “on the close of the last day of the specified period (within the meaning of **section 6(1)** of the Terrorism Suppression Amendment Act 2004)”: 15
- (b) for the words “**after 3 years**” in the heading to section 35 of the principal Act, there were substituted the words “**at close of specified period**”:
- (c) for the words “3 years after the date on which it takes effect” in section 35(1) of the principal Act, there were substituted the words “on the close of the last day of the specified period (within the meaning of **section 6(1)** of the Terrorism Suppression Amendment Act 2004)”. 20

Consequential amendments

- 7 Amendment to Immigration Act 1987** 25
- Section 2(1) of the Immigration Act 1987 is amended by omitting from paragraph (d) of the definition of **act of terrorism** the expression “section 8(1)”, and substituting the expression “section 8(1) or **(2A)**”.
- 8 Amendment to Proceeds of Crime Act 1991** 30
- Section 2(1) of the Proceeds of Crime Act 1991 is amended by omitting from paragraphs (c) and (d) of the definition of **tainted property** the expression “section 8(1)” in both places where it appears, and substituting in each case the expression “section 8(1) or **(2A)**”. 35