

## 2. FEDERAL CODE OF CRIMINAL PROCEDURE

### *Article 194*

For all legal purposes, the offences provided for in the following legal codes shall be classified as serious offences since they gravely affect fundamental values of society:

1. In the federal penal code, the following offences:
  - ... 4. Terrorism, provided for in article 139, first paragraph, ....

## 3. FEDERAL ACT AGAINST ORGANIZED CRIME

### *Article 2*

When three or more persons organize or agree to organize in order to engage, continuously or repeatedly, in conduct which in itself or in combination with other conducts has as its purpose or result the perpetration of one or more of the following offences, they shall be punished, solely by virtue of that fact, as members of organized crime:

- I. Terrorism, provided for in article 139, first paragraph, ... of the Federal Penal Code.

## XXX. NEW ZEALAND<sup>70</sup>

### 1. AVIATION CRIMES ACT 1972<sup>71</sup>

An Act to give effect to the provisions of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the Montreal Convention for the

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<sup>70</sup> Transmitted to the Secretariat by that Government on 16 June 1998 and 10 March 2001. The following pieces of legislation have also been provided to the Secretariat and are available for consultation from the Codification Division, Office of Legal Affairs: Geneva Conventions Act 1958; Geneva Conventions Amendment Act 1987 and the Act to amend the Immigration Act 1987.

<sup>71</sup> Public Act 1972 No. 137, as amended by the: Aviation Crimes Amendment Act 1999; Civil Aviation Act 1990; Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Amendment Act 1996; Extradition Act 1999; Civil Aviation Amendment Act 1976; Misuse of Drugs Act 1975 and Immigration Act 1987.

Suppression of Unlawful Acts against the Safety of Civil Aviation, [the Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation,] and the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, and for matters incidental thereto [20 October 1972]

*1. Short Title and Commencement*

(1) This Act may be cited as the Aviation Crimes Act 1972.

(2) Sections 7, 8, 15, and 16 of this Act shall come into force on a date to be fixed by the Governor-General by Order in Council. Different dates may be so fixed in respect of different sections.

{Editorial Note: s7, s8, s15, and s16 came into force on 12 March 1974 by SR 1974452.}

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the date of its passing.

*2. Interpretation*

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

“Act of violence” means an act which, if committed in New Zealand, would constitute:

(a) An assault as defined in any of sections 192, 193, 194, 196, or 202C of the Crimes Act 1961; or

(b) Any of the crimes specified in sections 188, 189, 190, 191, 197, 198, 198A, 198B, 199, 200, 202, 203, or 209 of the Crimes Act 1961.

“Aircraft” has the same meaning as in the Civil Aviation Act 1990.

“Aviation security officer” means an aviation security officer within the meaning of the Civil Aviation Act 1990.

“Commander”, in relation to an aircraft, means the pilot for the time being in lawful command of the aircraft.

“Conviction on indictment” has the same meaning as in section 3 of the Crimes Act 1961.

“International airport” means any airport designated as an airport of entry and departure for international air traffic where the formalities incident to customs, immigration, public health, animal and plant quarantine, and similar procedures are carried out.

**“Military service”** includes naval and air-force service; and a certificate by the Minister of Foreign Affairs that any aircraft is or is not used in military service for the purposes of this Act shall be conclusive evidence of the fact certified.

**“New Zealand”** includes all waters within the outer limits of the territorial sea of New Zealand as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.

**“New Zealand aircraft”** means an aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1990.

**“Ordinarily resident in New Zealand”** has the same meaning as in section 4 of the Crimes Act 1961.

**“The Hague Convention”** means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on the 16th day of December 1970.

**“The Montreal Convention”** means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on the 23rd day of September 1971.

**“The Montreal Protocol”** means the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988.

**“The Tokyo Convention”** means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on the 14th day of September 1963.

The terms **“baggage”**, **“cargo”**, **“carrier”**, **“contract”**, and **“passenger”**, in relation to any contract of carriage, have the same meanings as in section 18 of the Carriage by Air Act 1967, whether the contract of carriage is for international carriage or domestic carriage; and the term **“passenger”** includes a person who has reported to an employee or agent of the carrier for the purpose of going on board an aircraft pursuant to a contract to carry him as a passenger.

{Editorial Note: Definitions of **“baggage”** & **“cargo”** were omitted from the Carriage of Air Act 1976 on 1 June 1980 by 1979, No 43, s31(1).}

(2) For the purposes of this Act, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation:

Provided that in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place, or, in the case of a forced landing in a place that is not within the

territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.

(3) For the purposes of this Act, an aircraft is in service from the time when pre-flight preparation of the aircraft by ground personnel or by the aircraft's crew begins for a specific flight until either:

- (a) The flight is cancelled; or
- (b) Twenty-four hours after the aircraft, having commenced the flight, lands; or
- (c) The aircraft, having commenced the flight, makes a forced landing and any competent authorities referred to in subsection (2) of this section assume responsibility for the aircraft and for persons and property on board the aircraft; or
- (d) The aircraft, having commenced the flight, ceases to be in flight,

whichever is the latest.

## CRIMES RELATING TO AIRCRAFT [AND INTERNATIONAL AIRPORTS]

### 3. *Hijacking*

Everyone commits the crime of hijacking and is liable on conviction on indictment to imprisonment for life, who, while on board an aircraft in flight, whether in or outside New Zealand, unlawfully, by force or by threat of force or by any form of intimidation, seizes or exercises control, or attempts to seize or exercise control, of that aircraft.

{Editorial Note: For authorisation of security officers to arrest without warrant re offences against this section see 1990 No 98, s85(1)(a).}

### 4. *Crimes in connection with hijacking*

(1) Everyone who, while on board an aircraft in flight outside New Zealand, does or omits anything which, if done or omitted by that person in New Zealand, would be a crime, commits that crime if the act or omission occurred in connection with the crime of hijacking.

(2) Without limiting the generality of subsection (1) of this section, an act or omission by any person shall be deemed to occur in connection with the crime of hijacking if it was done or omitted with intent:

- (a) To commit or facilitate the commission of the crime of hijacking; or

(b) To avoid the detection of himself or of any other person in the commission of the crime of hijacking; or

(c) To avoid the arrest or facilitate the flight of himself or of any other person upon the commission of the crime of hijacking.

{Editorial Note: For authorisation of security officers to arrest without warrant re offences against this section see 1990 No 98, s85(1)(a).}

#### 5. *Other crimes relating to aircraft*

Everyone commits a crime, and is liable on conviction on indictment to imprisonment for a term not exceeding 14 years, who, whether in or outside New Zealand,

(a) On board an aircraft in flight, commits an act of violence which is likely to endanger the safety of the aircraft; or

(b) Destroys an aircraft in service; or

(c) Causes damage to an aircraft in service which renders the aircraft incapable of flight or which is likely to endanger the safety of the aircraft in flight; or

(d) Places or causes to be placed on an aircraft in service anything which is likely to destroy the aircraft, or to cause damage to the aircraft which will render it incapable of flight, or which is likely to endanger the safety of the aircraft in flight; or

(e) Destroys, damages, or interferes with the operation of any air-navigation facility used in international air navigation, where the destruction, damage, or interference is likely to endanger the safety of an aircraft in flight; or

(f) Endangers the safety of an aircraft in flight by communicating to any other person any information which the person supplying the information knows to be false.

{Editorial Note: For authorisation of security officers to arrest without warrant re offences against this section see 1990 No 98, s85(1)(a).}

#### 5A. *Crimes relating to international airports*

(1) A person commits a crime who, whether in or outside New Zealand, using any device, substance, or weapon, intentionally does any of the following acts that endangers or is likely to endanger the safety of an international airport:

- (a) At the international airport, commits an act of violence that causes or is likely to cause serious injury or death; or
- (b) Destroys or seriously damages the facilities of the international airport; or
- (c) Destroys or seriously damages an aircraft that is not in service and is located at the international airport; or
- (d) Disrupts the services of the international airport.

(2) Subject to subsection (3), a person who commits a crime against this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(3) A person who commits a crime against subsection (1)(a),

(a) In circumstances where the conduct concerned is the same as conduct described as murder under sections 158, 160, 167, and 168 of the Crimes Act 1961, must on conviction on indictment be sentenced to imprisonment for life; and

(b) In circumstances where the conduct concerned is the same as conduct described as manslaughter under sections 158, 160, and 171 of the Crimes Act 1961, is liable on conviction on indictment to imprisonment for life.

## 6. *Extradition Act Amended*

Repealed.

## 7. *Crimes deemed to be included in extradition treaties*

(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, the crime of hijacking, if not already described in the treaty, is deemed to be an offence described in any extradition treaty concluded before 12 March 1974 and for the time being in force between New Zealand and any country that is a party to the Hague Convention.

(2) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, each crime in section 5 is deemed to be an offence described in any extradition treaty concluded before 12 March 1974 and for the time being in force between New Zealand and any country that is a party to the Montreal Convention.

(3) If, under subsection (1) or subsection (2), a crime is deemed to be an offence described in an extradition treaty, a person may be surrendered for that crime in accordance with the provisions of the Extradition Act 1999 even if the act or

omission occurred before the date on which the crime was deemed to be an offence described in the extradition treaty.

(4) Subsection (3) does not apply in respect of an act or omission that, had it occurred within the jurisdiction of New Zealand, would not at that time have constituted an offence under New Zealand law.

(5) For the purposes of this section,

“Country” includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty and the Hague Convention or, as the case may be, the Montreal Convention, extends:

“Crime” includes:

- (a) Aiding, abetting, inciting, counselling, or procuring any person to commit that crime; and
- (b) Inciting, counselling, or attempting to procure any person to commit that crime when it is not in fact committed; and
- (c) Being an accessory after the fact to that crime.

(6) A certificate given by the Minister of Foreign Affairs and Trade that a country is a party to the Hague Convention or the Montreal Convention, as the case may be, is sufficient evidence of that fact.

*7A. Crimes against section 5A deemed to be included in extradition treaties*

(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, each crime described in section 5A of this Act is deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between New Zealand and any foreign country which is a party to the Montreal Protocol.

(2) When subsection (1) deems a crime to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 1999 in respect of an act or omission which amounts to that crime is liable to be surrendered in accordance with the provisions of that Act, whether the act or omission occurred before or after the date on which the crime was deemed to be an offence described in the extradition treaty.

(3) This section does not apply in respect of an act or omission that, had it occurred within the jurisdiction of New Zealand, would not at that time have constituted an offence under New Zealand law.

(4) A certificate given under the hand of the Minister of Foreign Affairs and Trade that any foreign country is a party to the Montreal Protocol is sufficient evidence of that fact.

(5) For the purposes of this section,

“Crime” includes:

- (a) An attempt to commit that crime;
- (b) Aiding, abetting, inciting, counselling, or procuring a person to commit that crime;
- (c) Inciting, counselling, or attempting to procure a person to commit that crime when it is not in fact committed;
- (d) Being an accessory after the fact to that crime.

“Foreign country” includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the Montreal Protocol extends.

#### 8. *Surrender of Offenders*

Repealed.

#### 9. *Application of sections 3, 4, and 5*

(1) Nothing in section 3 or section 4 of this Act shall apply if both the place of take-off and the place of actual landing of the aircraft (not being a New Zealand aircraft) are in the territory of the country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless:

- (a) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- (b) The act or omission occurred in New Zealand; or
- (c) The alleged offender is present in New Zealand; or
- (d) The aircraft is leased without crew to a lessee:
  - (i) Whose principal place of business is in New Zealand; or
  - (ii) In any other case, who is a New Zealand citizen or a person ordinarily resident in New Zealand.



(2) Nothing in paragraph (a), paragraph (b), paragraph (c), paragraph (d), or paragraph (f) of section 5 of this Act shall apply if both the place of take-off and the place of actual or intended landing of the aircraft (not being a New Zealand aircraft) are in the territory of a country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless:

- (a) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- (b) The act or omission occurred in New Zealand; or
- (c) The alleged offender is present in New Zealand; or
- (d) The aircraft is leased without crew to a lessee:
  - (i) Whose principal place of business is in New Zealand; or
  - (ii) In any other case, who is a New Zealand citizen or a person ordinarily resident in New Zealand.

(3) Nothing in section 3 or section 4 or paragraph (a), paragraph (b), paragraph (c), paragraph (d), or paragraph (f) of section 5 of this Act shall apply to aircraft used in military, customs, or police service (not being aircraft used for the purposes of any of the Armed Forces of New Zealand or of the New Zealand Customs or of the New Zealand Police), unless:

- (a) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- (b) The act or omission occurred in New Zealand.

#### *9A. Application of Section 5A*

Section 5A does not apply in respect of acts or omissions that occur outside New Zealand unless the alleged offender is present in New Zealand.

#### *10. Application of certain provisions of crimes act*

Nothing in section 8 of the Crimes Act 1961 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand) or in section 400 of that Act (which requires the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft) shall apply with respect to the crime of hijacking or to any of the crimes described in section 5 of this Act or to any crime referred to in section 4 of this Act committed in connection with the crime of hijacking.

## TAKING FIREARMS, EXPLOSIVES, ETC., ON TO AIRCRAFT

### *11. Taking firearms, explosives, etc., on to aircraft*

(1) Everyone commits a crime, and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, or without the permission of the owner or operator of the aircraft or of a person duly authorised by either of them to give such permission, takes or attempts to take on board any aircraft:

(a) Any firearm; or

(b) Any other dangerous or offensive weapon or instrument of any kind whatsoever; or

(c) Any ammunition; or

(d) Any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the aircraft or of persons on board the aircraft.

(2) For the purposes of this section, the term “firearm” means any gun, rifle, or pistol, whether acting by force of explosives or not; and includes any such gun, rifle, or pistol which for the time being is not capable of discharging any shot, bullet, or other missile, but which by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be so capable; and also includes any such gun, rifle, or pistol which is for the time being dismantled.

{Editorial Note: For authorisation of security officers to arrest without warrant re offences against this section see 1990 No 98, s85(1)(a).}

## SEARCH OF PASSENGERS, BAGGAGE, AND CARGO

### *12. Search of passengers, baggage, and cargo*

(1) Any member of the New Zealand Police, any aviation security officer, or any officer of Customs, or any employee or agent of the carrier authorised by the carrier for the purpose may, with the consent of the passenger, search any passenger and his baggage before the passenger boards any aircraft in New Zealand pursuant to any contract providing for the carriage of the passenger by air from any place in New Zealand to any other place (whether in New Zealand or elsewhere).

(2) If the passenger declines to allow himself or his baggage to be searched, the carrier may refuse to carry him.

(3) A carrier shall not be liable to any civil proceeding, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or any part thereof, by reason of the fact that the carrier has refused to carry a passenger who has declined to allow himself or his baggage to be searched.

(4) The following provisions shall apply with respect to any search made pursuant to subsection (1) of this section:

(a) The passenger shall not be required to remove any article of clothing (other than a coat or similar article), for the purpose of being searched;

(b) Except where the search is made by means of any mechanical or electrical or electronic or other similar device, no female shall be searched except by a female.

(5) Any employee or agent of the carrier authorised by the carrier for the purpose, or any aviation security officer, may examine any cargo before the cargo is loaded on to any aircraft in New Zealand pursuant to a contract providing for the carriage of the cargo by air from a place in New Zealand to any other place (whether in New Zealand or elsewhere).

### *13. Search of persons declining to allow search*

(1) Where:

(a) Pursuant to subsection (2) of section 12 of this Act a carrier refuses to carry a person who has declined to allow himself or his baggage to be searched; and

(b) A member of the New Zealand Police has reasonable grounds to suspect that a crime against this Act in relation to the aircraft on which that person was to be carried has been, is being, or is likely to be, committed, whether by that person or by any other person,

the member of the Police may, without warrant, search that first-mentioned person and his baggage, and may detain him for the purposes of that search, and may take possession of any article referred to in paragraph (a), paragraph (b), paragraph (c), or paragraph (d) of section 11 of this Act found in the course of that search.

(2) The refusal of any person to allow himself or his baggage to be searched pursuant to section 12 of this Act shall not of itself constitute reasonable grounds for suspecting that a crime against this Act in relation to the aircraft has been, is being, or is likely to be, committed.

(3) Every member of the New Zealand Police exercising the power of search conferred by subsection (1) of this section shall identify himself to the person searched, and shall also tell him that the search is being made pursuant to that

subsection. He shall also, if not in uniform and if so required, produce evidence that he is a member of the New Zealand Police.

#### *14. Evidence of offences*

Nothing found in the course of a search or examination made pursuant to section 12 or section 13 of this Act shall be admissible as evidence in any criminal proceedings against the person who, or whose baggage, has been searched, or, as the case may be, the consignor of any cargo that has been examined, other than proceedings in respect of a crime against this Act or the crime of treason or any crime punishable by imprisonment for life or for a term of 3 years or more, or in respect of an offence against section 16 of the Arms Act 1958 (which relates to the unlawful carriage or possession of firearms, ammunition, or explosives), or in respect of an offence against the Misuse of Drugs Act 1975.

### POWERS OF AIRCRAFT COMMANDER

#### *15. Powers of aircraft commander*

(1) Without limiting the provisions of section 60 of the Crimes Act 1961, if the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe that any person on board the aircraft has done or is about to do on board the aircraft:

(a) Anything which is an offence under the law of the country in which the aircraft is registered (not being a law of a political nature or a law based on racial or religious discrimination); or

(b) Anything (whether an offence or not) which jeopardises or may jeopardise:

(i) The safety of the aircraft or of persons or property on board the aircraft; or

(ii) Good order and discipline on board the aircraft,

the commander may take with respect to that person such reasonable measures, including restraint, as may be necessary:

(c) To protect the safety of the aircraft or of persons or property on board the aircraft; or

(d) To maintain good order and discipline on board the aircraft; or

(e) To enable the commander to disembark or deliver that person in accordance with subsection (4) or subsection (5) of this section.

(2) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and any member of the crew shall if so required by the commander, assist in restraining any person whom the commander is entitled under subsection (1) of this section to restrain. Any member of the crew and any other person on board the aircraft may, without the commander's authority, take with respect to any person on board the aircraft such reasonable measures, including restraint, as he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(3) Any restraint imposed on any person on board an aircraft under the powers conferred by subsection (1) or subsection (2) of this section shall not be continued after the aircraft ceases to be in flight, unless the commander of the aircraft notifies the appropriate authorities of the country in which the aircraft ceases to be in flight, either before or as soon as reasonably practicable after that time, that a person on board is under restraint and of the reasons for such restraint, but, provided that notification has been given, restraint may be continued:

(a) For any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with the requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (4) or subsection (5) of this section; or

(b) If the person under restraint agrees to continue his journey under restraint on board that aircraft.

(4) If the commander of an aircraft has reasonable grounds to believe that a person on board the aircraft has done or is about to do on board the aircraft anything (whether an offence or not) which jeopardises or may jeopardise:

(a) The safety of the aircraft or of persons or property on board the aircraft; or

(b) Good order and discipline on board the aircraft,

he may, if he considers it necessary to do so in order to protect the safety of the aircraft, disembark that person in any country in which the aircraft may be.

(5) If the commander of an aircraft has reasonable grounds to believe that any person on board the aircraft has done on board the aircraft anything which in the commander's opinion is a serious offence under the law of the country in which the aircraft is registered, he may deliver that person:

(a) In New Zealand, to any member of the New Zealand Police; or

(b) In any other country which is a party to the Tokyo Convention, to any person exercising functions corresponding to those of a member of the New Zealand Police.

(6) If the commander of an aircraft disembarks any person pursuant to subsection (4) of this section, in the case of a New Zealand aircraft, in any country, or, in the case of any other aircraft, in New Zealand, he shall report the fact of, and the reasons for, that disembarkation to an appropriate authority in the country of disembarkation (being, in New Zealand, a member of the New Zealand Police).

(7) If the commander of an aircraft intends to deliver any person in accordance with subsection (5) of this section in New Zealand or, in the case of a New Zealand aircraft, in any other country which is a party to the Tokyo Convention, he shall, before or as soon as practicable after landing, give notification of his intention and of the reasons for his intention to an appropriate authority in that country (being, in New Zealand, a member of the New Zealand Police).

(8) Any commander of an aircraft who without reasonable cause fails to comply with the requirements of subsection (6) or subsection (7) of this section is liable on summary conviction to a fine not exceeding \$400.

(9) A person who in good faith imposes reasonable measures, including restraint, on another person in accordance with the provisions of this section is not guilty of an offence and is not liable to any civil proceeding in respect of those measures.

#### *16. Arrest of persons delivered to police*

(1) Any member of the New Zealand Police shall accept delivery of a person whom the commander of an aircraft seeks to deliver to him in accordance with subsection (5) of section 15 of this Act if he has reasonable grounds to suspect that person of having done or omitted on board that aircraft anything that is a crime against this Act or any other Act.

(2) Where any member of the New Zealand Police accepts delivery of a person under subsection (1) of this section, he shall forthwith arrest that person.

#### *17. Power to search persons on aircraft*

If the commander of an aircraft in flight has reasonable grounds to suspect that a crime against this Act has been, is being, or is likely to be, committed on board or in relation to that aircraft, he, or any member of the crew of the aircraft or any other person on board the aircraft authorised by him to do so, may search any person or baggage on board the aircraft, and may take possession of any article found which has been used or could be used to effect or facilitate the commission of a crime against this Act.

## MISCELLANEOUS PROVISIONS

### *18. Attorney-General's consent required to prosecutions*

No proceedings for the trial and punishment of any person charged with a crime against section 3 or section 4 or section 5 or section 5A or section 11 of this Act shall be instituted in any Court except with the consent of the Attorney-General.

Provided that a person charged with any such crime may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the crime has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

### *19. Aircraft in military, customs, or police service*

Nothing in sections 11 to 17 of this Act shall apply to aircraft used in the military, customs, or police service of any country, including New Zealand.

### *20. Joint registration of aircraft*

Where an aircraft is subject to joint or international registration, it shall be deemed for the purposes of this Act to be registered in the country which, according to the records of the International Civil Aviation Organisation, is the country of registration.

### *21. Other acts not affected*

Nothing in this Act shall be construed to limit or affect the operation of any provision of the Immigration Act 1987, or, except as expressly provided in this Act, of any provision of the Crimes Act 1961.

## 2. CRIMES (INTERNATIONALLY PROTECTED PERSONS, UNITED NATIONS AND ASSOCIATED PERSONNEL, AND HOSTAGES) ACT 1980<sup>72</sup>

An Act to give effect to:

- (a) The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 1973; and

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<sup>72</sup> Public Act 1980 No. 44, as amended by the: Crimes (Internationally Protected Persons and Hostages) Amendment Act 1998; Extradition Act 1999; Foreign Affairs Amendment Act 1993; External Relations Act 1988; Immigration Act 1987; and Crimes Amendment Act (No. 3) 1985.

(b) The Convention Against the Taking of Hostages 1979; and

(c) The Convention on the Safety of United Nations and Associated Personnel 1994;

and for matters incidental to the implementation of those Conventions.

[2 December 1980]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

*1. Short Title and Commencement:*

(1) This Act may be cited as the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980.

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council, and different dates may be so appointed for the commencement of this Act in respect of the 1973 Convention and the 1979 Convention.

{Editorial Note: This Act came into force on 12 December 1985 by SR 19853132.}

*2. Interpretation*

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

“Associated person”, in relation to an alleged act or omission that constitutes a crime by virtue of or against any of sections 3 to 6, means:

(a) A person assigned by a Government or an intergovernmental organisation with the agreement of the competent organ of the United Nations; or

(b) A person engaged by:

(i) The Secretary-General of the United Nations; or

(ii) A specialised agency of the United Nations; or

(iii) The International Atomic Energy Agency; or

(c) A person deployed by a humanitarian non-governmental organisation or agency under an agreement with:



- (i) The Secretary-General of the United Nations; or
- (ii) A specialised agency of the United Nations; or
- (iii) The International Atomic Energy Agency

to carry out activities in support of the fulfillment of the mandate of a United Nations operation.

“Conviction on indictment” has the same meaning as in section 3 of the Crimes Act 1961.

“Fugitive Offenders Act 1881”: Definition repealed.

“Internationally protected person”, in relation to an alleged act or omission that constitutes a crime by virtue of or against any of sections 3 to 6, means:

- (a) A person who, at the time of the alleged act or omission, is:
  - (i) A Head of State; or
  - (ii) A member of a body that performs the functions of a Head of State under the constitution of the State; or
  - (iii) A Head of Government; or
  - (iv) A Minister of Foreign Affairs

and is outside the territory of the State in which he or she holds office.

(b) A member of the family of a person referred to in paragraph (a) who is accompanying that person.

(c) A person who, at the time of the alleged act or omission, is:

- (i) A representative or an official of a State; or
- (ii) An official or agent of an international organisation of an intergovernmental character

and is entitled under international law to special protection from attack on his or her person, freedom, or dignity.

(d) A member of the family of a person referred to in paragraph (c) who is a member of that person’s household.

“New Zealand” includes all waters within the outer limits of the territorial sea of New Zealand (as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977).

“Person protected by a convention” means:

- (a) An associated person; or
- (b) An internationally protected person; or
- (c) A United Nations person.

“The 1973 Convention” means the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 December 1973.

“The 1979 Convention” means the Convention Against the Taking of Hostages, opened for signature at New York on 18 December 1979.

“The 1994 Convention” means the Convention on the Safety of United Nations and Associated Personnel, opened for signature at New York on 9 December 1994.

“United Nations operation” means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:

- (a) If the operation is for the purpose of maintaining or restoring international peace and security; or
- (b) If the Security Council of the United Nations, or the General Assembly of the United Nations, has declared, for the purposes of the 1994 Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation.

“United Nations person”, in relation to an alleged act or omission that constitutes a crime by virtue of or against any of sections 3 to 6, means:

- (a) A person engaged or deployed by the Secretary-General of the United Nations as a member of the military, police, or civilian components of a United Nations operation; or
- (b) An official or expert on mission of:
  - (i) The United Nations; or
  - (ii) A specialised agency of the United Nations; or
  - (iii) The International Atomic Energy Agency

who is present in an official capacity in the area where a United Nations operation is being conducted.

“Vehicle” includes any means of conveyance.

(2) In paragraph (a)(i) of the definition of the term “internationally protected person” in subsection (1) of this section, the term “Head of State” includes, in relation to any Commonwealth country (other than the United Kingdom) of which Her Majesty the Queen is Head of State, the Governor-General or other person who performs the functions of the Head of State as Her Majesty’s representative.

Compare: 1972 No 137, s2; Internationally Protected Persons Act 1978, s1(5) (U.K.)

## INTERNATIONALLY PROTECTED PERSONS AND UNITED NATIONS AND ASSOCIATED PERSONNEL

### 3. *Crimes against persons*

(1) Without limiting anything in the Crimes Act 1961, every one commits a crime who does an act or omits to do an act, if:

(a) He or she does the act, or omits to do the act, in New Zealand or outside New Zealand; and

(b) He or she does the act, or omits to do the act, to or in relation to a person whom he or she knows to be a person protected by a convention; and

(c) The act or omission is one that constitutes, or would, if done or made in New Zealand, constitute,

(i) A crime referred to or described in a provision of the Crimes Act 1961 specified in Schedule 1; or

(ii) An attempt to commit such a crime, if the crime is not itself constituted by a mere attempt.

(2) Every one who commits a crime against this section is liable on conviction on indictment to the same penalty to which he or she would have been liable had he or she been charged with a crime against the relevant provision of the Crimes Act 1961.

Compare: Internationally Protected Persons Act 1978, s1(1)(a), (2)(a), (4) (U.K.)

#### 4. *Crimes against premises or vehicles*

(1) Without limiting anything in the Crimes Act 1961, every one commits a crime who does an act or omits to do an act, if:

(a) He or she does the act, or omits to do the act, in New Zealand or outside New Zealand; and

(b) He or she does the act, or omits to do the act, to or in relation to:

(i) Premises that he or she knows to be the official premises or private residence of a person protected by a convention; or

(ii) A vehicle that he or she knows is used by a person protected by a convention; and

(c) He or she does the act, or omits to do the act, while such a person is present in those premises or that residence or vehicle; and

(d) The act or omission is one that constitutes, or would, if done or made in New Zealand, constitute,

(i) A crime referred to or described in a provision of the Crimes Act 1961 specified in Schedule 2; or

(ii) An attempt to commit such a crime, if the crime is not itself constituted by a mere attempt.

(2) Every one who commits a crime against this section is liable on conviction on indictment to the same penalty to which he would have been liable had he been charged with a crime against the relevant provision of the Crimes Act 1961.

Compare: Internationally Protected Persons Act 1978, s1(1)(b), (2)(a), (4) (U.K.)

#### 5. *Threats against persons*

(1) Every one commits a crime who threatens to do an act, if:

(a) The act constitutes a crime against section 3; and

(b) He or she makes the threat in New Zealand or outside New Zealand; and

(c) He or she makes the threat to or in relation to a person whom he or she knows to be an internationally protected person.

(1A) Every one commits a crime who threatens to do an act, if:

- (a) The act constitutes a crime against section 3; and
- (b) He or she makes the threat in New Zealand or outside New Zealand; and
- (c) He or she makes the threat to or in relation to a person whom he or she knows to be a United Nations person or an associated person; and
- (d) He or she makes the threat with the intention of compelling the person, or any other person, to do or refrain from doing an act.

(2) Every one who commits a crime against this section is liable on conviction on indictment to imprisonment for a term not exceeding:

- (a) Seven years; or
- (b) The term of years prescribed by the relevant provision of the Crimes Act 1961 in respect of the crime that he would have committed had he carried out his threat in New Zealand,

whichever is the lesser.

Compare: Internationally Protected Persons Act 1978, s1(3), (4) (U.K.)

6. *Threats against premises or vehicles*

(1) Every one commits a crime who threatens to do an act, if:

- (a) The act constitutes a crime against section 4; and
- (b) He or she makes the threat in New Zealand or outside New Zealand; and
- (c) He or she makes the threat to or in relation to:
  - (i) Premises that he or she knows to be the official premises or private residence of an internationally protected person; or
  - (ii) A vehicle that he or she knows is used by an internationally protected person.

(1A) Every one commits a crime who threatens to do an act, if:

- (a) The act constitutes a crime against section 4; and

(b) He or she makes the threat in New Zealand or outside New Zealand; and

(c) He or she makes the threat to or in relation to:

(i) Premises that he or she knows to be the official premises or private residence of a United Nations person or an associated person; or

(ii) A vehicle that he or she knows is used by a United Nations person or an associated person; and

(d) He or she makes the threat with the intention of compelling the person, or any other person, to do or refrain from doing an act.

(2) Every one who commits a crime against this section is liable on conviction on indictment to imprisonment for a term not exceeding 3 years.

Compare: Internationally Protected Persons Act 1978, s1(3), (4) (U.K.)

*6A. Sections 3 to 6 not to apply to certain United Nations operations*

Sections 3 to 6 do not apply, in relation to United Nations personnel and associated personnel, to a United Nations operation:

(a) Authorised by the Security Council of the United Nations as an enforcement action under Chapter VII of the Charter of the United Nations; and

(b) In which United Nations personnel or associated personnel are engaged as combatants against organised armed forces; and

(c) To which the law of international armed conflict applies.

*7. Prosecution need not prove certain matters*

Notwithstanding anything in sections 3 to 6 of this Act, in any proceedings brought under any of those sections, it shall not be necessary for the prosecution to prove the following matters:

(a) In respect of:

(i) An internationally protected person to whom paragraph (a) or paragraph (c) of the definition of that term in section 2(1) applies; or

(ii) A United Nations person or an associated person,

that the defendant knew, at the time of the alleged crime, the identity of that person or the capacity in which that person was an internationally protected person, a United Nations person, or an associated person.

(b) In respect of any internationally protected person to whom paragraph (b) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was accompanying any other person to whom paragraph (a) of that definition applies.

(c) In respect of any internationally protected person to whom paragraph (c) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was entitled under international law to special protection from attack on his person, freedom, or dignity.

(d) In respect of any internationally protected person to whom paragraph (d) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was a member of the household of any other person referred to in paragraph (c) of that definition.

## HOSTAGES

### 8. *Hostage-taking*

(1) Subject to subsection (2) of this section, every one commits the crime of hostage-taking who, whether in or outside New Zealand, unlawfully seizes or detains any person (in this section called the hostage) without his consent, or with his consent obtained by fraud or duress, with intent to compel the Government of any country or any international intergovernmental organisation or any other person to do or abstain from doing any act as a condition, whether express or implied, for the release of the hostage.

(2) No one shall be convicted of the crime of hostage-taking if:

- (a) The act of hostage-taking takes place in New Zealand; and
- (b) The alleged offender and the hostage are New Zealand citizens; and
- (c) The alleged offender is in New Zealand.

(3) Every one who commits the crime of hostage-taking is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

## GENERAL PROVISIONS

### 9. *Extradition Act Amended*

Repealed.

### 10. *Crimes deemed to be included in extradition treaties*

(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act,

(a) Each crime described in section 3 or section 4 or section 8, including:

- (i) Attempting to commit that crime (where it is not itself constituted by a mere attempt); or
- (ii) Aiding, abetting, inciting, counselling, or procuring any person to commit that crime; or
- (iii) Inciting, counselling, or attempting to procure any person to commit that crime when it is not in fact committed; or
- (iv) Being an accessory after the fact to that crime; and

(b) Each crime described in section 5 or section 6,

is, if not already described in the treaty, deemed to be an offence described in any extradition treaty concluded before 12 December 1985 and for the time being in force between New Zealand and any country that is a party to the 1973 Convention or, as the case may require, the 1979 Convention.

(2) If under subsection (1) a crime is deemed to be an offence described in an extradition treaty, no person may be surrendered for that crime in accordance with the provisions of the Extradition Act 1999 if the alleged act or omission occurred before 12 December 1985.

(3) For the purposes of this section, "country" includes any territory for whose international relations the government of a country is responsible and to which the extradition treaty and the 1973 Convention or, as the case may require, the 1979 Convention, extends.

### 10A. *Further provision on crimes deemed to be included in extradition treaties*

(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act,



(a) Each crime described in section 3 or section 4 or section 8, including:

- (i) Attempting to commit that crime (where it is not itself constituted by a mere attempt); or
- (ii) Aiding, abetting, inciting, counselling, or procuring any person to commit that crime; or
- (iii) Inciting, counselling, or attempting to procure any person to commit that crime when it is not in fact committed; or
- (iv) Being an accessory after the fact to that crime; and

(b) Each crime described in section 5 or section 6,

is, if not already described in the treaty, deemed to be an offence described in any extradition treaty concluded before the commencement of the Crimes (Internationally Protected Persons and Hostages) Amendment Act 1998 and for the time being in force between New Zealand and any country that is a party to the 1994 Convention.

(2) If under subsection (1) a crime is deemed to be an offence described in an extradition treaty, no person may be surrendered for that crime in accordance with the provisions of the Extradition Act 1999 if the alleged act or omission occurred before the commencement of the Crimes (Internationally Protected Persons and Hostages) Amendment Act 1998.

(3) For the purposes of this section, “country” includes any territory for whose international relations the government of a country is responsible and to which the extradition treaty and the 1994 Convention extends.

#### *11. Surrender of offenders*

Repealed.

#### *12. Restrictions on surrender*

(1) Without limiting the grounds on which surrender must or may be refused under the Extradition Act 1999, a Court in New Zealand must not order the surrender, or the detention for the purposes of surrender, of a person to another country in respect of an act or omission that amounts to a crime against any of sections 3 to 8 if the Attorney-General certifies that the case is being or is about to be considered to determine whether or not proceedings should be brought in New Zealand against that person in respect of the act or omission.

(2) If, in any case to which subsection (1) applies, it is subsequently determined that proceedings should not be brought in New Zealand against the person in

respect of the act or omission, the Attorney-General must advise the Court accordingly, and the Court must proceed with the matter as if the Attorney-General's certificate had never been given.

(3) Without limiting the grounds on which surrender must or may be refused under the Extradition Act 1999, a person must not be surrendered to another country if it appears that the person's position may be prejudiced because communication with the person by the appropriate authorities of the country that is entitled in international law to exercise rights of protection in respect to the person cannot be effected.

*13. Further restrictions on surrender of offenders*

Repealed.

*14. Attorney-General's consent required to prosecutions*

(1) Subject to subsection (2) of this section, no proceedings for the trial and punishment of any person charged with a crime against any of sections 3 to 8 of this Act shall be instituted in any Court except with the consent of the Attorney-General.

(2) A person charged with a crime against any of those provisions may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the crime has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

Compare: 1972 No 137, s18

*15. Evidence*

For any purpose in connection with this Act, a certificate, given by the Secretary of Foreign Affairs and Trade, certifying:

(a) Any fact relevant to the question of whether a person was or was not, at any material time, a person protected by a convention; or

(b) Any fact relevant to the question of whether an operation was or was not, at any material time, a United Nations operation of a kind described in section 6A; or

(ba) That any country is or is not, or was or was not at any material time, a party to the 1973 Convention, the 1979 Convention, or the 1994 Convention; or

(c) That the Government of any country is or is not, or was or was not at any material time, responsible for the international relations of any territory,

shall be sufficient evidence of that fact.

Compare: Internationally Protected Persons Act 1978, s1(1), (5) (U.K.)

*16. Application of certain provisions of crimes act*

Nothing in section 8 of the Crimes Act 1961 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand) or in section 400 of that Act (which requires the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft) shall apply with respect to any proceedings brought under any of sections 3 to 8 of this Act.

Compare: 1972 No 137, s10

*17. Other acts not affected*

Nothing in this Act shall limit or affect the Immigration Act 1987, the Aviation Crimes Act 1972, nor, except as expressly provided in this Act, the Crimes Act 1961.

Compare: 1972 No 137, s21

SCHEDULES

SCHEDULE 1

Section 3(1)(a)

CRIMES AGAINST PERSONS PROTECTED BY A CONVENTION

Section of Crimes Act 1961	Subject-matter
128	Sexual violation
129	Attempt to commit sexual violation
142A	Compelling indecent act with animal
167, 168	Murder
171	Manslaughter
173	Attempt to murder
174	Counselling or attempting to procure murder
176	Accessory after the fact to murder
188	Wounding with intent
189	Injuring with intent

Section of Crimes Act 1961	Subject-matter
191	Aggravated wounding or injury
192	Aggravated assault
197	Disabling
198	Discharging firearm or doing dangerous act with intent
199	Acid throwing
200	Poisoning with intent
201	Infecting with disease
209	Kidnapping

## SCHEDULE 2

### Section 4(b)(i)

#### CRIMES AGAINST PREMISES OR VEHICLES OF PERSONS PROTECTED BY A CONVENTION

Section of Crimes Act 1961	Subject-matter
294	Arson
295	Attempted Arson
296	Damage to other property by fire or explosive
297	Attempt to damage property by fire or explosive
298	Willful damage
300	Interfering with means of transport

### 3. INTERNATIONAL TERRORISM (EMERGENCY POWERS) ACT 1987<sup>73</sup>

An Act to make better provision to deal with international terrorist emergencies.

[20 July 1987]

BE IT ENACTED by the Parliament of New Zealand as follows:

#### 1. *Short Title and Commencement*

(1) This Act may be cited as the International Terrorism (Emergency Powers) Act 1987.

(2) This Act shall come into force on the 1st day of September 1987.

<sup>73</sup> Public Act 1987 No. 179, as amended by the Crimes Amendment Act (No. 2) 1997.

## 2. *Interpretation*

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

“Emergency power” means any of the powers specified in section 10 or section 11 of this Act:

“Intercept”, in relation to a private communication, includes hear, listen to, record, monitor, or acquire the communication while it is taking place:

“International terrorist emergency” means a situation in which any person is threatening, causing, or attempting to cause:

(a) The death of, or serious injury or serious harm to, any person or persons; or

(b) The destruction of, or serious damage or serious injury to,

(i) Any premises, building, erection, structure, installation, or road; or

(ii) Any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle; or

(iii) Any natural feature which is of such beauty, uniqueness, or scientific, economic, or cultural importance that its preservation from destruction, damage or injury is in the national interest; or

(iv) Any chattel of any kind which is of significant historical, archaeological, scientific, cultural, literary, or artistic value or importance; or

(v) Any animal,

in order to coerce, deter, or intimidate:

(c) The Government of New Zealand, or any agency of the Government of New Zealand; or

(d) The Government of any other country, or any agency of the Government of any other country; or

(e) Any body or group of persons, whether inside or outside New Zealand,

for the purpose of furthering, outside New Zealand, any political aim.

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

“Public place” means a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and includes any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle carrying or available to carry passengers for reward.

“Road” includes any motorway, regional motorway, regional road, street, private road, access way, private way, or service lane, and every bridge, culvert, ford, gate, or other thing belonging to any road.

(2) A reference in this Act to a party to a private communication is a reference to:

(a) Any originator of the communication and any person intended by the originator to receive it; and

(b) A person who, with the express or implied consent of any originator of the communication or any person intended by the originator to receive it, intercepts the communication.

(3) A reference in this Act to the Prime Minister means,

(a) Where the Prime Minister is for any reason unavailable, the Deputy Prime Minister; and

(b) Where both the Prime Minister and the Deputy Prime Minister are for any reason unavailable, the next highest ranked Minister of the Crown available.

### 3. *This act to bind the crown*

This Act binds the Crown.

### 4. *This act not to affect functions, duties, and powers under other acts or general law*

Except as otherwise provided in this Act, nothing in this Act shall limit, or be in substitution for, or in any way affect, the functions, duties, or powers of any person under the provisions of any other enactment or any rule of law.

Compare: 1983 No 46, s4

## AUTHORITY TO EXERCISE EMERGENCY POWERS

### *5. Commissioner of police to inform prime minister of existence of international terrorist emergency*

Where the Commissioner of Police believes:

- (a) That an emergency is occurring; and
- (b) That the emergency may be an international terrorist emergency; and
- (c) That the exercise of emergency powers is or may be necessary to deal with that emergency,

the Commissioner shall forthwith inform the Prime Minister that such an emergency is believed to be occurring and that it is or may be necessary to exercise emergency powers.

### *6. Meeting of ministers may authorise exercise of emergency powers*

(1) Upon being informed pursuant to section 5 of this Act, the Prime Minister may cause a meeting of not fewer than 3 Ministers of the Crown to be held for the purpose of considering whether to exercise the power conferred by subsection (2) of this section.

(2) The Ministers of the Crown, not being fewer than 3, present at the meeting held pursuant to subsection (1) of this section may, if they believe, on reasonable grounds,

- (a) That an emergency is occurring; and
- (b) That the emergency may be an international terrorist emergency; and
- (c) That the exercise of emergency powers is necessary to deal with that emergency,

by notice in writing signed by the Minister of the Crown presiding at the meeting, authorise the exercise, by the Police, of emergency powers.

(3) Every notice given pursuant to subsection (2) of this section,

- (a) Shall set out:

- (i) The names of the Ministers of the Crown present at the meeting held pursuant to subsection (1) of this section at which the giving of the notice is approved; and
- (ii) The date on which the notice is given; and
- (iii) The authority under which the notice is given; and
- (iv) The reasons for the giving of the notice; and
- (v) The circumstances specified in subsection (4) of this section in which the authority to exercise emergency powers under the notice will expire; and

(b) May contain such other information as may be appropriate in the circumstances.

(4) Subject to sections 7 and 8 of this Act, the authority to exercise emergency powers under any notice given pursuant to subsection (2) of this section shall expire:

- (a) Once the Commissioner of Police is satisfied that the emergency is not an international terrorist emergency; or
- (b) When the international terrorist emergency ends; or
- (c) At the close of the day specified in the notice as the day when that notice expires; or
- (d) At the close of the seventh day after the day on which the notice is given,

whichever occurs first.

(5) The Minister of the Crown who signs any notice given pursuant to subsection (2) of this section shall forthwith give public notice of the giving of that notice by such means as are reasonable in the circumstances, and the notice shall be published in the Gazette as soon as practicable.

(6) Notwithstanding anything to the contrary in any other Act, every notice given pursuant to subsection (2) of this section shall come into force when it is signed by the Minister of the Crown presiding at the meeting of Ministers held pursuant to subsection (1) of this section.

*7. House of representatives may extend authority to exercise emergency powers*

(1) Where any notice is given pursuant to section 6(2) of this Act authorising the exercise, by the Police, of emergency powers, the Minister of the Crown who



signed that notice shall inform the House of Representatives that such authorisation has been given, and of the reasons why it was given,

(a) Forthwith, if the House of Representatives is then sitting; or

(b) If the House of Representatives is not then sitting, at the earliest practicable opportunity.

(2) Where the House of Representatives is informed, pursuant to subsection (1) of this section, that a notice has been given pursuant to section 6(2) of this Act authorising the exercise, by the Police, of emergency powers, the House of Representatives may, by resolution, from time to time extend that authority to exercise emergency powers for such period, not exceeding 7 days in each instance, as is specified in the resolution.

(3) If, when a notice is given pursuant to subsection (2) of section 6 of this Act, Parliament has been dissolved or has expired and no Proclamation has been made summoning Parliament to meet on a day not later than the day on which the authority to exercise emergency powers pursuant to that notice would expire under subsection (4)(c) or (d) of that section, the Governor-General may, by Proclamation approved in Executive Council, where the Governor-General is satisfied that it is necessary to extend the authority to exercise emergency powers pursuant to that notice, from time to time extend that authority to exercise emergency powers for such period, not exceeding 7 days in each instance, as is specified in the Proclamation.

(4) No resolutions passed by the House of Representatives under subsection (2) of this section, and no Proclamations made under subsection (3) of this section, may extend the authority to exercise emergency powers pursuant to a notice given pursuant to section 6(2) of this Act for a period which, in the aggregate, exceeds 14 days.

(5) Nothing in subsection (2) or subsection (3) of this section authorises any person to exercise any emergency power after the emergency in respect of which authority to exercise emergency powers has been given under this Act ends.

8. *House of representatives may revoke authority to exercise emergency powers*

Notwithstanding anything in section 6 or section 7 of this Act, the House of Representatives may at any time, by resolution, revoke:

(a) Any authority to exercise emergency powers under any notice given pursuant to section 6(2) of this Act,

(b) Any extension of any such authority pursuant to subsection (2) or subsection (3) of section 7 of this Act.

## EMERGENCY POWERS

### 9. *Proof of identity*

Every member of the Police shall, when exercising any emergency power,

- (a) Where it is reasonable and practical in the circumstances,
  - (i) Identify himself or herself to every person who is directly affected by the exercise of that power; and
  - (ii) Inform such persons of the authority under which that member is acting and the power or powers that that member is exercising; and
- (b) If that member of the Police is not in uniform, and if requested to do so, produce evidence that he or she is a member of the Police.

Compare: 1975 No 116, s18(4)

### 10. *Emergency powers*

(1) This section applies to any emergency in respect of which the Police are authorised, by or under section 6(2) or section 7 of this Act, to exercise emergency powers.

(2) Subject to this Act, any member of the Police may, for the purpose of dealing with any emergency to which this section applies, or of preserving life or property threatened by that emergency,

- (a) Require the evacuation of any premises or place (including any public place), or the exclusion of persons or vehicles from any premises or place (including any public place), within the area in which the emergency is occurring.
- (b) Enter, and if necessary break into, any premises or place, or any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle, within the area in which the emergency is occurring.
- (c) Totally or partially prohibit or restrict public access, with or without vehicles, on any road or public place within the area in which the emergency is occurring.
- (d) Remove from any road or public place within the area in which the emergency is occurring any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle impeding measures to deal with that emergency; and, where reasonably necessary for that purpose, may use force or may

break into any such aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle.

(e) Destroy any property which is within the area in which the emergency is occurring and which that member of the Police believes, on reasonable grounds, constitutes a danger to any person.

(f) Require the owner or person for the time being in control of any land, building, vehicle, boat, apparatus, implement, or equipment (in this paragraph referred to as requisitioned property) that is within the area in which the emergency is occurring forthwith to place that requisitioned property under the direction and control of that member of the Police, or of any other member of the Police.

(g) Totally or partially prohibit or restrict land, air, or water traffic within the area in which the emergency is occurring.

(3) Notwithstanding anything in any other Act, but subject to this Act, any member of the Police may, for the purpose of preserving life threatened by any emergency to which this section applies,

(a) Connect any additional apparatus to, or otherwise interfere with the operation of, any part of the telephone system; and

(b) Intercept private telephonic communications,

in the area in which the emergency is occurring.

(4) The power specified in subsection (3) of this section may be exercised only by, or with the authority of, a commissioned officer of the Police, and only if that officer believes, on reasonable grounds, that the exercise of that power will facilitate the preservation of life threatened by the emergency.

Compare: 1983 No 46, ss. 60-64(1)

#### *11. Requisitioning powers*

(1) Any member of the Police exercising any power conferred on that member by section 10(2)(f) of this Act to requisition any property shall give to the owner or person in charge of the requisitioned property a written statement specifying the property that is requisitioned and the person under whose control the property is to be placed.

(2) Where the owner or person for the time being in control of any property that may be requisitioned under section 10(2)(f) of this Act cannot be immediately found, any member of the Police may assume forthwith the control and direction of the requisitioned property.

(3) Where any member of the Police assumes the control and direction of any property under subsection (2) of this section, that member shall ensure that, as soon as reasonably practicable in the circumstances, a written statement specifying the property that has been requisitioned, and the person under whose control it has been placed, is given to the owner or person formerly in charge of the requisitioned property.

Compare: 1983 No 46, s64(2)-(4)

*12. Members of armed forces assisting police may exercise emergency powers*

(1) Subject to this Act, any emergency power (except the power specified in section 10(3) of this Act) may be exercised by any member of the Armed Forces who is assisting the Police to deal with any emergency to which section 10 of this Act applies as if that member of the Armed Forces were a member of the Police.

(2) Any member of the Armed Forces who is authorised by subsection (1) of this section to exercise any emergency power may exercise any such power only at, and in accordance with, the request of a member of the Police.

*13. Compensation payable where property requisitioned or destroyed*

(1) Where any requisitioned property has come under the control of any person acting under section 10(2)(f) or section 11 or section 12 of this Act, there shall, on application by any person having an interest in the requisitioned property, be payable, out of money appropriated by Parliament for the purpose, reasonable compensation for:

- (a) The use of that requisitioned property while under that control; and
- (b) Any loss of, or damage or injury to, that requisitioned property suffered or incurred while under that control.

(2) Where any property (other than requisitioned property, or any property belonging to any person and used by that person for the purpose of, or in the course of, causing an emergency in respect of which authority to exercise emergency powers has been given under this Act) is damaged or injured or destroyed as a result of any action taken by any member of the Police, or any member of the Armed Forces assisting the Police, in the course of dealing with that emergency, there shall, on application by any person having an interest in the property, be payable, out of money appropriated by Parliament for the purpose, reasonable compensation for such loss of, or damage or injury to, that property.

(3) Where there is any dispute as to the entitlement of any person to compensation under this section, or as to the amount of such compensation, or as to the liability of the Crown to pay any such compensation, the matter shall be determined by any Court of competent jurisdiction.

Compare: 1983 No 46, s65

*14. Prime minister may prohibit publication or broadcasting of certain matters relating to international terrorist emergency*

(1) Where, in respect of any emergency in respect of which authority to exercise emergency powers has been given under this Act, the Prime Minister believes, on reasonable grounds, that the publication or broadcasting of:

- (a) The identity of any person involved in dealing with that emergency;  
or
- (b) Any other information or material (including a photograph) which would be likely to identify any person as a person involved in dealing with that emergency,

would be likely to endanger the safety of any person involved in dealing with that emergency, or of any other person, the Prime Minister may, by notice in writing, prohibit or restrict:

- (c) The publication, in any newspaper or other document; and
- (d) The broadcasting, by radio or television or otherwise,

of the identity of any person involved in dealing with that emergency, and any other information or material (including a photograph) which would be likely to identify any person as a person involved in dealing with that emergency.

(2) Where, in respect of any emergency in respect of which authority to exercise emergency powers has been given under this Act, the Prime Minister believes, on reasonable grounds, that the publication or broadcasting of any information or material (including a photograph) relating to any equipment or technique lawfully used to deal with that emergency would be likely to prejudice measures designed to deal with international terrorist emergencies, the Prime Minister may, by notice in writing, prohibit or restrict:

- (a) The publication, in any newspaper or other document; and
- (b) The broadcasting, by radio or television or otherwise,

of any information or material (including a photograph) of any such equipment or technique.

(3) The Prime Minister may issue a notice under subsection (1) or subsection (2) of this section notwithstanding that the emergency in respect of which the notice is issued has ended.

(4) Where any notice is issued under subsection (1) or subsection (2) of this section, the Prime Minister shall forthwith give public notice of the issue of that notice by such means as are practicable in the circumstances, and the notice shall be published in the Gazette as soon as practicable.

(5) Nothing in this section shall restrict the broadcasting or reporting of the proceedings of the House of Representatives.

*15. Commencement, revocation, expiry, and renewal of notice issued under section 14*

(1) Notwithstanding anything in any other Act, every notice issued under section 14 of this Act shall become effective in relation to any person either:

(a) When that notice is delivered to that person; or

(b) On the giving of public notice of the issue of that notice pursuant to subsection (4) of that section,

whichever occurs first.

(2) The Prime Minister may at any time, by notice in the Gazette, revoke any notice issued under section 14 of this Act.

(3) Subject to subsections (2) and (4) of this section, every notice issued under section 14 of this Act shall expire 1 year after the date on which the notice was issued, or on such earlier date as may be specified in the notice.

(4) Subject to subsection (2) of this section, the Prime Minister may, from time to time, by notice in the Gazette, renew any notice issued under section 14 of this Act for such period, not exceeding 5 years in each instance, as is specified in the notice of renewal, if the renewal of the notice is necessary:

(a) To protect the safety of any person; or

(b) To avoid prejudice to measures designed to deal with international terrorist emergencies.

*16. Protection from liability*

Except as provided by section 13 of this Act, no action or proceeding shall be brought against the Crown, or any member of the Police, or any member of the Armed Forces, to recover damages for any loss of, or damage or injury to, any property where that loss, damage, or injury is due directly or indirectly to an emergency in respect of which authority to exercise emergency powers has been given under this Act, whether the loss or damage or injury is caused by any person taking any action, or failing to take any action, in the exercise or performance in good faith of that person's functions, duties, or powers under this Act.

Compare: 1983 No 46, s66

*17. Commissioner of police to give information to house of representatives*

(1) As soon as practicable after the end of any emergency in respect of which authority to exercise emergency powers is given under this Act, the Commissioner of Police shall, if any emergency power was exercised under this Act during that emergency, make a report to the House of Representatives on the exercise of that power.

(2) The Commissioner of Police shall include in every annual report prepared by the Commissioner for the purposes of section 65 of the Police Act 1958 information on the operation of any agreement between the Police and representatives of the news media under which guidelines are established for the reporting, by the news media, of terrorist incidents.

PROVISIONS RELATING TO INTERCEPTION OF PRIVATE COMMUNICATIONS

*18. Prohibition on disclosure of private communications lawfully intercepted*

No person who:

(a) Pursuant to the power conferred by section 10(3) of this Act, intercepts or assists in the interception of a private communication; or

(b) Acquires knowledge of a private communication as a direct or indirect result of that interception,

shall knowingly disclose the substance, meaning, or purport of that communication, or any part of that communication, otherwise than in the performance of that person's duty.

Compare: 1978 No 65, s23(1)

*19. Notice to be given of intention to produce evidence of private communication*

Particulars of a private communication intercepted pursuant to the power conferred by section 10(3) of this Act shall not be received in evidence by any Court against any person unless the party intending to adduce it has given to that person reasonable notice of that party's intention to do so, together with:

(a) A transcript of the private communication where that party intends to adduce it in the form of a recording, or a written statement setting forth the full particulars of the private communication where that party intends to adduce oral evidence of it; and

(b) A statement of the time, place, and date of the private communication, and of the names and addresses of the parties to the communication, if they are known.

Compare: 1978 No 65, s24

*20. Inadmissibility of evidence of private communications lawfully intercepted*

Where:

(a) A private communication is intercepted pursuant to the power conferred by section 10(3) of this Act during an emergency in respect of which authority to exercise emergency powers has been given under this Act; and

(b) That private communication discloses evidence relating to any offence that is not related to that emergency,

no particulars of that communication which relate to that offence shall be received in evidence by any Court against any person.

Compare: 1978 No 65, s26

**OFFENCES**

*21. Offences*

(1) Subject to subsection (4) of this section, every person commits an offence who,

(a) Without lawful excuse, fails or refuses to comply with any direction, requirement, prohibition, or restriction given to or imposed upon that person pursuant to section 10 of this Act,

(i) By any member of the Police; or

(ii) By any member of the Armed Forces acting under section 12 of this Act.

(b) Contrary to any notice issued by the Prime Minister under section 14 of this Act, publishes or causes or allows to be published in a newspaper or other document, or broadcasts or causes or allows to be broadcast by radio or television or otherwise,

(i) The identity of any person involved in dealing with an emergency in respect of which authority to exercise



emergency powers has been given under this Act, or any other information or material (including a photograph) which would be likely to identify any person as a person involved in dealing with any such emergency; or

- (ii) Any information or material (including a photograph) of any equipment or technique lawfully used to deal with any such emergency.

(2) Every person who commits an offence against subsection (1) of this section is liable on summary conviction,

- (a) In the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000.

- (b) In the case of a body corporate, to a fine not exceeding \$20,000.

(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who acts in contravention of section 18 of this Act.

(4) It is a defence to a charge under subsection (1)(a) of this section if the Court is satisfied that:

- (a) The member of the Police, or the member of the Armed Forces acting under section 12 of this Act, as the case may require, did not have reasonable grounds for believing that in all the circumstances of the case the direction, requirement, prohibition, or restriction was necessary for the purposes of dealing with the emergency in respect of which the direction, requirement, prohibition, or restriction was given or imposed, or of preserving life or property threatened by that emergency; or

- (b) The defendant had no reason to believe that the person giving or imposing that direction, requirement, prohibition, or restriction was a member of the Police, or a member of the Armed Forces acting under section 12 of this Act, as the case may require.

## CONSEQUENTIAL AMENDMENT

### 22. *Crimes act 1961 amended*

Repealed.

4. IMMIGRATION ACT 1987 - PART III: DEPORTATION OF  
PERSONS THREATENING NATIONAL SECURITY AND  
SUSPECTED TERRORISTS<sup>74</sup>

*72. Persons threatening national security*

Where the Minister certifies that the continued presence in New Zealand of any person named in the certificate constitutes a threat to national security, the Governor-General may, by Order in Council, order the deportation from New Zealand of that person.

*73. Suspected terrorists*

(1) The Minister may, by order signed by the Minister, order the deportation from New Zealand of any person where the Minister has reason to believe:

- (a) That the person is a member of or adheres to any organisation or group of persons that has engaged in, or has claimed responsibility for, an act of terrorism in New Zealand; or
- (b) That the person has engaged in, or claimed responsibility for an act of terrorism in New Zealand; or
- (c) That the person:
  - (i) Is a member of or adheres to any organisation or group of persons that has engaged in, or has claimed responsibility for, an act of terrorism outside New Zealand; or
  - (ii) Has engaged in, or claimed responsibility for, an act of terrorism outside New Zealand,

and that, by reason thereof, or for any other reason, that person's continued presence in New Zealand constitutes a threat to public safety; or

- (d) That the person will, if permitted to remain in New Zealand, engage in, or facilitate the commission of, any act of terrorism.

(2) The Minister may at any time revoke a deportation order made under this section.

*74. Certain matters to be specified in deportation order*

(1) Every deportation order made under section 72 of this Act shall state that it is made pursuant to that section.

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<sup>74</sup> The full text of the Act is available for consultation from the Codification Division, Office of Legal Affairs.

(2) Every deportation order made under section 73 of this Act:

- (a) Shall state the provision pursuant to which it is made; and
- (b) Shall state the ground or grounds on which it is made; and
- (c) Shall include notice of the right of appeal conferred by section 81 of this Act and the manner in which that right is to be exercised.

*75. Suspect may be arrested pending making of deportation order*

(1) Where a member of the Police believes on reasonable grounds that a person (in this section referred to as the suspected person) is a person to whom any of paragraphs (a) to (d) of subsection (1) of section 73 of this Act applies, the member of the Police may arrest the suspected person without warrant and place the suspected person in custody, and shall then refer the case as soon as possible to the Minister to determine whether or not to make a deportation order in respect of that person under that section.

(2) Every person who is arrested under this section shall be brought before a District Court Judge as soon as possible, and shall in no case be detained for more than 48 hours unless, within that period, a District Court judge issues a warrant of commitment under section 79 of this Act for the detention of that person in custody.

(3) If, in respect of any person who is placed in custody under this section and in respect of whom no warrant of commitment has been issued, the Minister decides not to make a deportation order, the person shall be released from custody forthwith.

*76. Currency of deportation order*

Every deportation order made under section 72 or section 73 of this Act shall be in force from the date on which it is served in accordance with section 77 of this Act, and shall, unless it is quashed or revoked in accordance with any of the provisions of this Act, remain in force until the person named in the order leaves New Zealand.

*77. Service of deportation order*

(1) A deportation order made under section 72 or section 73 of this Act shall be served on the person named in the order by personal service only.

(2) At any time after a deportation order has been served on any person under subsection (1) of this section, an immigration officer may do all or any of the following things:

(a) Require the person on whom the order is served to produce for inspection by the immigration officer that person's passport or certificate of identity.

(b) Where possession of any document referred to in paragraph (a) of this subsection is required by the immigration officer for any travel booking or otherwise for the purpose of effecting, the person's deportation from New Zealand, require the person on whom the order is served to surrender to the immigration officer, or to give to the officer written authority to uplift from any other person, any such document.

(c) Require the person to surrender to the immigration officer, or to give to the officer written authority to uplift from any other person, any travel tickets, or cash or security in lieu of travel tickets, held by or on behalf of that person.

(3) On producing a written authority given under paragraph (b) or paragraph (c) of subsection (2) of this section, an immigration officer may require any person named in the authority to surrender the document, or the travel tickets or cash or security in lieu of travel tickets, to which the authority relates, and that person shall surrender the document or the tickets or cash or security accordingly notwithstanding anything in any other Act or any rule of law.

(4) Any travel tickets or cash or security in lieu of travel tickets surrendered to an immigration officer under subsection (2) (c) or subsection (3) of this section may be used by the Crown in or towards effecting the deportation of the person from New Zealand, and, to the extent that they are not so used, shall be returned to the person on that person's departure from New Zealand, or, where appropriate, on the revocation or quashing of the deportation order.

*78. Arrest of person subject to deportation order*

(1) Any person in respect of whom a deportation order has been made under section 72 or section 73 of this Act may be arrested at any time by any member of the Police without warrant and placed in custody.

(2) Where any person is arrested under subsection (1) of this section before the deportation order has been served on that person, the deportation order shall be served on that person as soon as possible.

(3) Every person who is arrested under this section shall be brought before a District Court judge as soon as possible, and shall in no case be detained for more than 48 hours unless, within that period, a District Court Judge issues a warrant or commitment under section 79 of this Act for the detention of that person in custody.

*79. Powers of District Court judge in relation to persons in custody*

- (1) Every person who is taken into custody under section 75 or section 78 of this Act shall be brought before a District Court judge as soon as possible (and in no case later than 48 hours after the person was taken into custody).
- (2) Where any person is brought before a District Court judge under subsection (1) of this section, the following provisions shall apply:
  - (a) The judge shall, if satisfied on the balance of probabilities that the person is not the person named in the deportation order, order that the person be released from custody forthwith.
  - (b) Except in a case to which paragraph (a) of this subsection applies, the Judge shall:
    - (i) Issue a warrant of commitment in the prescribed form for the detention of the person; or
    - (ii) If satisfied that the release of the person would not be contrary to the public interest, order that the person be release on conditions in accordance with subsection (4) of this section, ending the person's deportation from New Zealand or an order of the High Court under section 84 of this Act.
- (3) Every warrant of commitment issued under this section shall authorise the person to whom it is addressed to detain the person named in it until:
  - (a) Required by a member of the Police to deliver up that person in accordance with section 85 of this Act; or
  - (b) Ordered by a District Court judge under subsection (9)(a) of this section to release that person; or
  - (c) Ordered by the High Court or a judge of the High Court to release that person.
- (4) Any order for the release of any person under subsection (2)(b) of this section shall be conditional upon the person residing at a specified address and reporting to a Police station, at intervals of not more than 7 days, on such days and at such times and in such manner as the Judge may specify, and may be subject to such other conditions as the Judge may think fit to impose.
- (5) Any condition imposed under subsection (4) of this section may be varied at any time by a District Court Judge on the application of a member of the Police or the person released, after hearing both parties or having allowed such opportunity

for both parties to be heard as seems reasonable in all the circumstances, and any such condition shall take effect as so varied.

(6) Any conditions imposed on a person under subsection (4) of this section, and any variation of such conditions under subsection (5) of this section, shall be notified in writing to the person on that person's release or, as the case may require, as soon as possible after the variation is made, and the written notice shall:

- (a) Specify the address at which the person is to reside; and
- (b) Set out any reporting or other conditions imposed; and
- (c) Include a warning that, if the person fails to reside at the specified address or breaches any reporting or other condition, the person is liable to be arrested without warrant and placed in custody.

(7) A breach of any condition imposed under subsection (4) of this section, or varied under subsection (5) of this section, shall nullify the order for release, and thereafter the person is liable to be arrested by any member of the Police without warrant and placed in custody.

(8) Every person who is arrested under subsection (7) of this section shall be brought before a District Court Judge as soon as possible (and in no case later than 48 hours after the person was arrested), and the Judge shall, if satisfied of the breach, issue a warrant of commitment in the prescribed form for the detention of that person in custody pending that person's deportation from New Zealand.

(9) Where, in respect of any person arrested under section 75 of this Act and subsequently detained pursuant to a warrant of commitment or released on conditions under this section, the Minister decides not to make a deportation order, or fails to make a deportation order within 14 days after the day of the arrest, an immigration officer shall forthwith inform the Registrar of a District Court, and the following provisions shall apply:

- (a) If the person is in custody, a District Court Judge (or, where no judge is available, the Registrar) shall order that person's release from custody forthwith.
- (b) If the person was released on conditions, the Judge (or Registrar) shall order that the person shall cease to be bound by those conditions, and the Registrar shall forthwith notify the person accordingly.

(10) Any conditions imposed on any person in accordance with this section shall lapse, and the person shall cease to be bound by them, when the person leaves New Zealand.

*80. Form of custody*

(1) Every person who is placed in custody under section 75 or section 78 or section 79 (7) of this Act shall be held in a Police station until that person is brought before a District Court Judge in accordance with section 79 (1) of this Act.

(2) Every person who is to be detained in custody pursuant to a warrant of commitment issued under section 79 of this Act shall be held in a penal institution.

*81. Appeal to High Court against deportation order*

(1) Any person in respect of whom a deportation order made under section 73 of this Act is in force may appeal to the High Court against the making of the order.

(2) Every such appeal shall be brought within 21 days after the day on which the order is served on the person named in it.

(3) On any appeal under this section, the High Court may confirm or quash the deportation order, as it thinks fit.

(4) *Repealed by s. 3 (4) of the Judicature Amendment Act 1991.*

(5) The decision of the High Court on any appeal under this section shall be final and conclusive.

(6) Except as expressly provided in this section or in regulations made under this Act, the High Court may regulate its procedure on any appeal under this section in such manner as it thinks fit.

*82. Powers of Judge to protect security*

(1) Without limiting the generality of subsection (6) of section 81 of this Act, in respect of any appeal under that section, a Judge of the High Court may, if the Judge is satisfied that it is the interests of security to do so, make any one or more of the following orders:

(a) An order forbidding publication of any report or account of the whole or any part of:

(i) The evidence adduced; or

(ii) The submissions made.

(b) An order forbidding the publication of the name of any witness or witnesses, or any name or particulars likely to lead to the identification of any witness or witnesses.

(c) An order excluding all or any persons other than the appellant, the respondent, any barrister or solicitor engaged in the proceedings, and any officer of the Court from the whole or any part of the proceedings.

(2) For the purposes of subsection (1) of this section, "security" means the protection of New Zealand, or any person, property, or thing within New Zealand, from acts of terrorism.

(3) Any order made under paragraph (a) or paragraph (b) of subsection (1) of this section:

(a) May be made for a limited period or permanently; and

(b) If it is made for a limited period, may be renewed for a further period or periods by the Court; and

(c) If it is made permanently, may be reviewed by the Court at any time.

(4) The breach of any order made under subsection (1) of this section, or any evasion or attempted evasion of it, may be dealt with as contempt of Court.

(5) Nothing in this section shall limit:

(a) Any other power of the Court to hear proceedings in private or to exclude any person from the Court or to punish any contempt of Court; or

(b) The provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings.

83. *Deportation order not to be executed pending, appeal, etc.*

(1) No deportation order made under section 73 of this Act shall be executed:

(a) Except at the request of the person named in the order,

(i) Within 21 days after it is served on the person to whom it applies; or

(ii) While any appeal under section 81 of this Act is pending; or

(b) Subject to [section 96] of the Criminal Justice Act 1985, while the person is undergoing imprisonment in a penal institution.



(2) For the purposes of subsection (1) of this section, an appeal is pending from the time when it is lodged until the time when the decision on the appeal is notified to the appellant, or (where appropriate) the time when the appellant withdraws the appeal.

*In subs. (1)(b) the expression "section 96" was substituted for the expression "section 92" by s. 52 of the Criminal Justice Amendment Act 1993.*

*84. Procedure where appeal successful*

In any case where, on an appeal under section 81 of this Act, the High Court quashes the deportation order, the Court shall order the immediate release of the appellant from custody or (as the case may require) from any conditions imposed under section 79 of this Act.

*85. Execution of deportation order where deportee in custody pursuant to warrant of commitment*

(1) This section applies to any person in respect of whom a deportation order made under section 72 or section 73 of this Act is in force and who is held in custody pursuant to a warrant of commitment issued under section 79 of this Act pending that person's deportation from New Zealand.

(2) Subject to section 83 of this Act, when a craft becomes available to take any person to whom this section applies from New Zealand, and it is practicable in all the circumstances for the person to leave on that craft, the Superintendent or other officer in charge of the penal institution in which that person is detained in custody shall, on being required in writing to do so by a member of the Police, deliver the person to whom the warrant applies into the custody of the member of the Police, who shall escort the person, or arrange for the person to be escorted, to the seaport or airport and ensure that the person is placed upon the craft and detained there until the craft leaves New Zealand.

(3) If, for any reason, that craft ceases to be available to take that person from New Zealand or is, or is likely to be, delayed in New Zealand for more than 24 hours, or if for any other reason the person is unable to leave New Zealand at the expected time, the person shall be returned to the custody of the Superintendent or other person to whom the warrant of commitment was addressed, and for that purpose that warrant shall be deemed still to be of full force and effect.

*86. Execution of deportation order where deportee serving sentence in penal institution*

(1) This section applies to any person in respect of whom a deportation order made under section 72 or section 73 of this Act is in force, and who is in a penal institution undergoing imprisonment.

(2) Subject to section 83 of this Act, on the date of the proposed release of a person to whom this section applies the Superintendent or other officer in charge of the penal institution shall, if called upon by any member of the Police to do so, instead of releasing that person, deliver the person into the custody of the member of the Police, who shall:

(a) If a craft is available within 24 hours to take the person from New Zealand, and it is practicable in all the circumstances for the person to leave on that craft, escort the person, or arrange for the person to be escorted, to the seaport or airport and ensure that the person is placed upon the craft and detained there until the craft leaves New Zealand; or

(b) If no craft is available within 24 hours to take the person from New Zealand, or if the craft that was so available ceases to be so available or is, or is likely to be, delayed in New Zealand for more than 24 hours, or if for any other reason the person is unable to leave New Zealand at the expected time, bring the person before a District Court Judge, in which case the provisions of section 79 of this Act, with any necessary modifications, shall apply.

*87. Execution of deportation order where deportee not in custody*

(1) This section applies to any person in respect of whom a deportation order made under section 72 or section 73 of this Act is in force and who is not in custody.

(2) Subject to section 83 of this Act, when a craft becomes available to take any person to whom this section applies from New Zealand, and it is practicable in all the circumstances for the person to leave on that craft, any member of the Police may, not earlier than 72 hours before the time at which the craft is due to leave New Zealand, arrest that person without warrant, detain that person in custody until it is time to escort that person, or arrange for that person to be escorted, to the seaport or airport, and ensure that the person is placed upon the craft and detained there until the craft leaves New Zealand.

(3) If, for any reason, the craft ceases to be available to take the person from New Zealand within the period of 72 hours or the craft is, or is likely to be, delayed beyond that period, or if for any other reason the person is unable to leave New Zealand at the expected time, the person shall either be released from custody or be brought before a District Court Judge, in which latter case the provisions of section 79 of this Act shall apply with any necessary modifications.

(4) Any person who is released under subsection (3) of this section, or has been released on conditions in accordance with section 79 of this Act, shall remain subject to any conditions imposed on that person under that section and liable to be dealt with in accordance with the foregoing provisions of this section, and any person who is ordered to be detained under that section shall thereafter be liable to be dealt with in accordance with the provisions of section 85 of this Act.

*88. Permit deemed cancelled where holder deported*

Where the holder of any permit is deported under this Part of this Act, the permit, and any returning resident's visa held by the holder of the permit, shall be deemed to be cancelled.

TRANSITIONAL PROVISIONS

*89. Deportation orders made by Minister under previous Act*

(1) This section applies to every order signed by the Minister, at any time before the commencement of this Act, under section 22 (3) of the Immigration Act 1964 in respect of any person who has not left New Zealand in accordance with the order, being an order that was still in force immediately before that commencement.

(2) Every order to which this section applies shall be deemed for the purposes of this Act and [section 96] of the Criminal Justice Act 1985 to be a deportation order made under this Part of this Act, and, subject to the succeeding provisions of this section, the provisions of this Part of this Act shall apply accordingly with any necessary modifications.

(3) If any order to which this section applies, or a copy of any such order, or written notice of the making of any such order, was served before the commencement of this Act on the person in respect of whom the order was made, the following provisions shall apply:

(a) The order shall be deemed to have been served under and in accordance with section 77 of this Act.

(b) Where any appeal under section 22G of the Immigration Act 1964 was properly brought but not determined before the commencement of this Act, it shall be deemed to have been brought under section 81 of this Act and shall be determined accordingly.

(c) Where the order, copy, or notice was served more than 28 days before the commencement of this Act and no appeal was brought under section 22G of the Immigration Act 1964, no appeal against the order shall lie under section 81 of this Act.

(d) Where the order, copy, or notice was served less than 28 days before the commencement of this Act and no appeal was brought under section 22G of the Immigration Act 1964 before that commencement, an appeal may be brought under section 81 of this Act at any time within 28 days after the date of that service.

*In subs. (2) the expression "section 96" was substituted for the expression "section 92" by s. 52 of the Criminal Justice Amendment Act 1993.*

*90. Persons ordered to leave New Zealand pursuant to Order in Council under previous Act*

(1) This section applies to every Order in Council made at any time before the commencement of this Act under section 22 (2) of the Immigration Act 1964 in respect of any person who has not left New Zealand in accordance with the Order in Council, being an order that was still in force immediately before the commencement of this Act.

(2) Every Order in Council to which this section applies shall be deemed for the purposes of this Act and [section 96] of the Criminal Justice Act 1985 to be an Order in Council made under section 72 of this Act and, subject to subsection (3) of this section, the provisions of this Part of this Act shall apply accordingly with any necessary modifications.

(3) If any order to which this section applies, or a copy of any such order, or written notice of the making of any such order, was served before the commencement of this Act on the person in respect of whom the order was made, the order shall be deemed to have been served under and in accordance with section 77 of this Act.

*In subs. (2) the expression "section 96" was substituted for the expression "section 92" by s. 52 of the Criminal Justice Amendment Act 1993.*

## 5. MARITIME CRIMES ACT 1999<sup>75</sup>

An Act to give effect to the provisions of the Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Rome Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf

[20 May 1999]

BE IT ENACTED by the Parliament of New Zealand as follows:

### *1. Short Title and Commencement*

- (1) This Act may be cited as the Maritime Crimes Act 1999.
- (2) This Act comes into force on 1 September 1999.

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<sup>75</sup> Public Act 1999 No. 56

## 2. *Interpretation*

In this Act, unless the context otherwise requires,

“Act of violence” means an act which, if committed in New Zealand, would constitute:

- (a) An assault as defined in any of sections 192, 193, 194, 196, or 202C of the Crimes Act 1961; or
- (b) Any of the crimes specified in sections 188, 189, 190, 191, 197, 198, 198A, 198B, 199, 200, 202, 203, or 209 of the Crimes Act 1961.

“Continental shelf” has the same meaning as in section 2(1) of the Continental Shelf Act 1964.

“Fixed platform” means any artificial island, installation, or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes.

“Maritime navigational facilities” includes:

- (a) Any lightship and any floating or other light exhibited for the guidance of ships,
- (b) Any description of a fog signal not carried on a ship,
- (c) All marks and signs in aid of marine navigation,
- (d) An electronic, radio, or other aid to marine navigation not carried on board a ship.

“Master” means a person (except a pilot) having command or charge of a ship.

“New Zealand” includes all waters within the outer limits of the territorial sea of New Zealand as defined in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.

“New Zealand ship” means a ship that is registered under the Ship Registration Act 1992.

“Ordinarily resident in New Zealand” has the same meaning as in section 4 of the Crimes Act 1961.

“Rome Convention” means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

“Rome Protocol” means the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.

“Scheduled to navigate”, in relation to a ship, means that the ship has:

- (a) An intended route; or
- (b) A voyage plan; or
- (c) A normal course of plying; or
- (d) An advertised sailing schedule.

“Ship” means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft.

### 3. *Act does not apply to certain ships*

This Act does not apply in relation to:

- (a) A warship; or
- (b) A ship owned or operated by a country when being used as a naval auxiliary or for customs or police purposes; or
- (c) A ship that has been withdrawn from navigation or is laid up.

## CRIMES RELATING TO SHIPS AND FIXED PLATFORMS

### 4. *Crimes relating to ships*

- (1) A person commits a crime who intentionally:
  - (a) By force or by threat of force or by any other form of intimidation seizes or exercises control over a ship; or
  - (b) On board a ship, commits an act of violence that is likely to endanger the safe navigation of the ship; or
  - (c) Destroys a ship; or
  - (d) Causes damage to a ship or the ship’s cargo and that damage is likely to endanger the safe navigation of the ship; or

(e) Places or causes to be placed on a ship anything that is likely to destroy the ship; or

(f) Places or causes to be placed on a ship anything that is likely to cause damage to the ship or the ship's cargo and that damage endangers or is likely to endanger the safe navigation of the ship; or

(g) Destroys, seriously damages, or seriously interferes with the operation of any maritime navigational facilities, if the destruction, damage, or interference is likely to endanger the safe navigation of a ship; or

(h) Endangers the safe navigation of a ship by communicating to another person information which the person communicating the information knows to be false.

(2) A person commits a crime who intentionally:

(a) Causes the death of any person in connection with the commission or attempted commission of any of the crimes against subsection (1) in circumstances where the conduct concerned is the same as conduct described as murder or manslaughter under sections 158, 160, 167, 168, and 171 of the Crimes Act 1961; or

(b) Injures any person in connection with the commission or attempted commission of any of the crimes against subsection (1) or paragraph (a) of this subsection.

(3) A person commits a crime who threatens to do, in relation to a ship, any act that is a crime against any of paragraphs (b) to (d) or paragraph (g) of subsection (1) if the threat:

(a) Is in order to compel any other person to do or abstain from doing any act; and

(b) Is likely to endanger the safe navigation of the ship.

#### *5. Crimes relating to fixed platforms*

(1) A person commits a crime who intentionally:

(a) By force or by threat of force or by any other form of intimidation seizes or exercises control over a fixed platform; or

(b) On board a fixed platform, commits an act of violence that is likely to endanger the safety of the platform; or

(c) Destroys a fixed platform; or

**(d) Causes damage to a fixed platform and that damage is likely to endanger the safety of the platform; or**

**(e) Places or causes to be placed on a fixed platform anything that is likely to destroy the platform or to endanger the safety of the platform.**

**(2) A person commits a crime who intentionally:**

**(a) Causes the death of any person in connection with the commission or attempted commission of any of the crimes against subsection (1) in circumstances where the conduct concerned is the same as conduct described as murder or manslaughter under sections 158, 160, 167, 168, and 171 of the Crimes Act 1961; or**

**(b) Injures any person in connection with the commission or attempted commission of any of the crimes against subsection (1) or paragraph (a) of this subsection.**

**(3) A person commits a crime who threatens to do, in relation to a fixed platform, any act that is a crime against any of paragraphs (b) to (d) of subsection (1) if the threat:**

**(a) Is in order to compel any other person to do or abstain from doing any act; and**

**(b) Is likely to endanger the safety of the platform.**

**6. Further provisions relating to crimes against sections 4 and 5**

**(1) For the purposes of sections 4(2) and 5(2), an act or omission by any person occurs in connection with the commission or attempted commission of any of the crimes against section 4(1) or section 5(1) (as the case may be) if it was done or omitted with intent:**

**(a) To commit or facilitate the commission or attempted commission of any of those crimes; or**

**(b) To avoid the detection of himself or herself or of any other person in the commission or attempted commission of any of those crimes; or**

**(c) To avoid the arrest or facilitate the flight of himself or herself or of any other person on the commission or attempted commission of any of those crimes.**

**(2) Subsection (1) does not limit the generality of the expression “in connection with the commission or attempted commission of”.**



7. *Penalties for crimes against sections 4 and 5*

(1) A person who commits a crime against section 4(1) or section 4(2)(b) or section 4(3) or section 5(1) or section 5(2)(b) or section 5(3) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(2) A person who commits a crime against section 4(2)(a) or section 5(2)(a),

(a) In circumstances where the conduct concerned is the same as conduct described as murder, must on conviction on indictment be sentenced to imprisonment for life; and

(b) In circumstances where the conduct concerned is the same as conduct described as manslaughter, is liable on conviction on indictment to imprisonment for life.

JURISDICTION AND APPLICATION PROVISIONS

8. *Extra-territorial jurisdiction in respect of crimes relating to ships*

(1) Section 4 applies in respect of acts or omissions that occur outside New Zealand if:

(a) The act or omission occurs against or on board a ship that is navigating, or is scheduled to navigate, into or through or from the waters beyond the outer limits of the territorial sea of a country or the lateral limits of its territorial sea with adjacent countries; and

(b) Any of the following applies:

(i) The ship is a New Zealand ship; or

(ii) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand; or

(iii) The alleged offender is present in New Zealand.

(2) Regardless of subsection (1), section 4 applies in respect of acts or omissions that occur outside New Zealand if:

(a) The act or omission occurs against or on board a ship that is within the territory of another country; and

(b) The alleged offender is found in a country that is a party to the Rome Convention but is not the country where the act or omission occurred; and

(c) Either:

(i) The ship is a New Zealand ship; or

(ii) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand.

(3) Regardless of subsection (1) or subsection (2), section 4 applies in respect of acts or omissions that occur outside New Zealand if:

(a) The act or omission occurs against or on board a ship that is within the territory or another country; and

(b) The alleged offender is present in New Zealand.

9. *Extra-territorial jurisdiction in respect of crimes relating to fixed platforms:*

Section 5 applies in respect of acts or omissions that occur outside New Zealand if:

(a) The act or omission is:

(i) By a person on a fixed platform that is located on the continental shelf of New Zealand; or

(ii) By a New Zealand citizen or a person ordinarily resident in New Zealand; or

(b) The alleged offender is present in New Zealand.

10. *Application of crimes act 1961*

(1) The following sections of the Crimes Act 1961 do not apply in respect of any of the crimes described in section 4 or section 5 of this Act:

(a) Section 8 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand).

(b) Section 92 (which relates to piracy).

(c) Section 400 (which relates to the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft).

(2) Except for subsection (1), this Act does not limit the Crimes Act 1961.

## ***POWERS OF MASTERS***

### ***11. Master may deliver alleged offender to appropriate authorities***

(1) A master of a New Zealand ship may deliver to the appropriate authorities of a country that is a party to the Rome Convention any person whom the master has reasonable grounds to believe has committed a crime against section 4.

(2) A master who intends to deliver a person under subsection (1) must notify the appropriate authorities of the country of:

- (a) His or her intention to deliver the person to those authorities; and
- (b) His or her reasons for intending to do so.

(3) A notification under subsection (2) must be given,

- (a) If it is reasonably practicable to do so, before the ship enters the territorial sea of the country; or
- (b) In any other case, as soon as is reasonably practicable.

(4) If a master delivers a person under subsection (1), the master must give to the authorities of the country any evidence relating to the alleged crime that is in the master's possession.

(5) A master commits an offence who fails, without reasonable excuse, to comply with subsection (2) or subsection (3).

(6) A master who commits an offence against subsection (5) is liable on summary conviction to a fine not exceeding \$500.

### ***12. Power to search persons and baggage on ships***

(1) This section applies if, because of the distance from land or for any other reason, it is impractical for the master of a ship to obtain, within a reasonable time, the assistance of a member of the police in New Zealand or a law enforcement officer of another country.

(2) If a master of a ship has reasonable grounds to believe that a crime against this Act has been, is being, or is likely to be, committed on board or in relation to the ship, the master, or any member of the crew, or any other person on board the ship authorised by the master to do so, may:

- (a) Search a person on board the ship who the master or the other person conducting the search has reasonable grounds to believe has committed or is committing or is likely to commit a crime against this Act.

(b) Search the baggage of a person who is searched under paragraph (a).

(c) Search any baggage that the master or the other person who is conducting the search has reasonable grounds to believe contains any article that has been used or could be used to effect or facilitate the commission of a crime against this Act.

(3) The person who conducts the search may take possession of any article found during the search that has been used or could be used to effect or facilitate the commission of a crime against this Act.

(4) If an article is seized under this section, it must be dealt with:

(a) In accordance with section 11(4); or

(b) By giving it to a member of the police in New Zealand or a law enforcement officer of another country; or

(c) By returning the article to its owner if the master of the ship considers that the article has not been used and is not or is not likely to be used to effect or facilitate the commission of a crime against this Act, and the possession of the article is otherwise lawful.

## EXTRADITION OF OFFENDERS

### *13. Definitions relating to extradition provisions*

For the purposes of sections 14 to 16,

“Country” includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty and the Rome Convention or the Rome Protocol (as the case may be) extends:

“Crime” includes:

(a) An attempt to commit that crime.

(b) Aiding, abetting, inciting, counselling, or procuring a person to commit that crime.

(c) Inciting, counselling, or attempting to procure a person to commit that crime when it is not in fact committed.

(d) Being an accessory after the fact to that crime.

*14. Crimes deemed to be included in extradition treaties*

(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 40 or section 104 of that Act, each crime described in section 4 or section 5 of this Act is deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between New Zealand and any country which is a party to the Rome Convention or the Rome Protocol (as the case may be).

(2) Despite subsection (1), no person is liable to be surrendered under the Extradition Act 1999 in respect of an act or omission that amounts to a crime to which that subsection applies if that act or omission occurred before the date on which the crime was deemed by that subsection to be an offence described in the relevant extradition treaty.

*15. Restriction on surrender*

(1) If the surrender of a person is sought in respect of any act or omission that amounts to a crime described in section 4 or section 5, the Minister of Justice, or the court before which that person is brought, in deciding whether to order the surrender of that person, must have due regard to whether the country that is seeking the surrender will give effect to the following rights of that person:

(a) The right to communicate, without delay, with the nearest appropriate representative of the country of which that person is a citizen or is habitually resident; and

(b) The right to be visited by a representative of the country referred to in paragraph (a).

(2) To avoid doubt, section 99 of the Extradition Act 1999 applies if 2 or more countries seek and obtain an order for the surrender of the same person in respect of any act or omission that amounts to a crime described in section 4 or section 5.

(3) If:

(a) Two or more countries request the surrender of a person under the Extradition Act 1999 in respect of any act or omission that amounts to a crime described in section 4; and

(b) Those countries are parties to the Rome Convention; and

(c) The ship in respect of which the act or omission relates was flying the flag of 1 of those countries when the alleged crime was committed,

then the Minister of Justice must, in addition to the matters specified in section 99(2) of the Extradition Act 1999, have due regard to the interests and responsibilities of the country whose flag the ship was flying.

(4) This section does not limit any other considerations that the Minister of Justice or a court may take into account when considering whether or not to order the surrender of a person.

*16. Certification of country as party to Rome Convention or Rome Protocol*

A certificate given by the Minister of Foreign Affairs and Trade for the purposes of section 14 that any country is a party to the Rome Convention or the Rome Protocol (as the case may be) is, in the absence of evidence to the contrary, sufficient proof of that fact.

MISCELLANEOUS PROVISIONS

*17. Attorney-General's consent required for prosecutions*

(1) No proceedings for the trial and punishment of a person charged with a crime against section 4 or section 5 can be instituted in any court except with the consent of the Attorney-General.

(2) However, a person charged with a crime against section 4 or section 5 may be arrested or a warrant for that person's arrest may be issued and executed, and that person may be remanded in custody or on bail, even though the Attorney-General's consent under subsection (1) has not been obtained.

*18. Certification of ships in military service*

A certificate given by the Minister of Foreign Affairs and Trade for the purposes of this Act that any ship is or is not a warship or a ship owned or operated by a country being used as a naval auxiliary is, in the absence of evidence to the contrary, sufficient proof of that fact.

*19. Immigration Act 1987 not limited*

This Act does not limit or affect the Immigration Act 1987.

XXXI. PANAMA<sup>76</sup>

1. PENAL CODE

*Article 312.* Anyone who recruits persons, acquires weapons or carries out other hostile acts not approved by the Government, within the territory of the Republic

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<sup>76</sup> Transmitted to the Secretariat by that Government on 10 June 1996.