

LXXXI. NEW ZEALAND⁴⁹

1. SUMMARY OF LEGISLATION OF NEW ZEALAND RELATED TO TERRORISM

Counter-Terrorism Bill

In 2003, New Zealand passed the Counter-Terrorism Bill. The Bill implements in domestic law the requirements of two international Conventions relating to the Physical Protection of Nuclear Material (1979), and on the Marking of Plastic Explosives for the Purposes of Detection (1991).

It created the following new offences designed to deal with terrorist-type activity:

- harbouring or concealing a person knowing that person has carried out, or intends to carry out, terrorist activity;
- causing sickness or disease in animals, intending to cause serious risk to the animal population of New Zealand and major damage to the New Zealand economy, or being reckless as to whether such an outcome occurs;
- contaminating products (food, water, crops) intended for human consumption, intending or being reckless as to whether one of the following results: harm to one or more persons, major economic loss to a person, or major damage to the national economy;
- threatening to do an act that is likely to cause risk to the health or safety of one or more persons, or major property damage, or major economic loss to a person, or major damage to the national economy, or communicating information that is known or believed to be false about one of those outcomes, intending to significantly disrupt the civilian population, or an infrastructure facility, or the administration of government, or commercial interests.

The Bill makes terrorism an aggravating factor for sentencing purposes, and provides that when murder occurs in the course of a “terrorist act” (as defined in section 5 of the Terrorism Suppression Act), there will be a presumption in favour of 17 years’ minimum non-parole.

⁴⁹ Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1269, enclosure), 10 July 2002 (S/2002/795, enclosure), 11 April 2003 and 3 September 2003 (S/2003/860, enclosure) and 9 June 2004. Information was also provided in relation of the Aviation Crimes Act of 1972 (as amended in 1999), the Extraction Act 1999 and the Counter Terrorism Bill.

The Bill also gives the New Zealand Customs Service the power to detain property intercepted crossing the border, where there is good cause to suspect that the property is owned or controlled by a designated terrorist entity, or an entity that is eligible for designation under the Terrorism Suppression Act. In the case of already designated entities, Customs will be able to detain all property intercepted. In the case of entities eligible but not yet designated, the detention power will apply only to cash or cash equivalents (such as precious metals). In both instances, there is a “necessities of life” exception that refers to “cash...necessary to satisfy essential human needs”. This is modeled on similar provisions in the Terrorism Suppression Act.

The Bill provides for the following investigative powers that are not terrorism specific but are deemed necessary to address serious criminal offending in general, including in terrorism:

- the use of tracking devices by Police and Customs officers (subject to safeguards, such as a warrant requirement and reporting obligations);
- a requirement which “may require a specified person to provide information or assistance that is reasonable and necessary to allow the (Police) to access data held in, or accessible from, a computer that is on premises named in the warrant”;
- provides that when evidence of a serious criminal offence (such as drug related, serious violent, and terrorist offences) is fortuitously discovered in the course of investigating a different serious offence under an interception warrant (such a warrant allows the interception of oral communications by means of listening devices), evidence of the first offence will be admissible.

2. TERRORISM SUPPRESSION ACT 2002⁵⁰

The Parliament of New Zealand enacts as follows:

1. *Title*

This Act is the Terrorism Suppression Act 2002.

PART 1- PRELIMINARY PROVISIONS

2. *Commencement*

(1) Except as provided in subsection (2), this Act comes into force on the day after the date on which it receives the Royal assent.

⁵⁰ Public Act 2002 No. 34

(2) Sections 18, 63 to 66, 68, 69, 76, 79, and 80 come into force on a date appointed by Order in Council.

3. Purpose of this act

The purpose of this Act is—

(a) to make further provision in New Zealand law for the suppression of terrorism; and

(b) to make provision to implement in New Zealand law New Zealand's obligations under

(i) the Bombings Convention; and

(ii) the Financing Convention; and

(iii) the Anti-terrorism Resolution.

4. Interpretation

(1) In this Act, unless the context otherwise requires, act against a specified terrorism convention means an act

(a) that constitutes an offence as defined in a specified terrorism convention; and

(b) that is not excluded from the application of the specified terrorism convention (for example, because an international aspect required by 1 or more of its provisions does not exist).

“Anti-terrorism Resolution” means Resolution 1373 (2001) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 28 September 2001, a copy of which is set out in Schedule.

“Bombings Convention” means the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations at New York on 15 December 1997, a copy of the English text of which is set out in Schedule 1 carried out, in relation to a terrorist act, has the meaning given to it in section 25(1).

“classified security information” has the meaning given to it in section 32(1).

“country” includes any State, territory, province, or other part of a country.

“deal with” has the meaning given to it in section 9(5).

“entity” means a person, group, trust, partnership, or fund, or an unincorporated association or organization.

“explosive or other lethal device” means

(a) an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage; or

(b) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage through the release, dissemination, or impact of

(i) toxic chemicals, biological agents or toxins or similar substances; or

(ii) radiation or radioactive material.

“facility and financial institution” have the meanings referred to in section 44(5).

“Financing Convention” means the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations at New York on 9 December 1999, a copy of the English text of which is set out in Schedule 2.

“financing of terrorism”

(a) means an offence against section 8(1); but

(b) despite paragraph (a), in sections 18, 68, and 69, means an offence of that kind involving a terrorist act of a kind referred to in section 5(1)(b) or (c)

“funds”

(a) means assets of every kind, whether tangible or intangible, moveable or immovable, however acquired; and

(b) includes legal documents or instruments (for example, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit) in any form (for example, in electronic or digital form) evidencing title to, or an interest in, assets of any kind.

“infrastructure facility” means a facility (whether publicly or privately

owned) providing or distributing basic services for a population (for example, water, sewage disposal, energy, fuel, or communications).

“intelligence and security agency” means

- a) the New Zealand Security Intelligence Service;
- (b) the Government Communications Security Bureau;
- (c) any other agency declared by the Governor-General from time to time by Order in Council as an intelligence and security agency for the purposes of the Inspector-General of Intelligence and Security Act 1996.

“international organization” means any organisation of States or Governments of States, or any organ or agency of any organisation of that kind.

“make available” has the meaning given to it in section 10(6).

“Official Assignee” means the Official Assignee of New Zealand.

“ordinarily resident in New Zealand” has the meaning given to it in subsection (2).

“place of public use”

- (a) means those parts of any building, land, street, waterway, or other location that are accessible or open to members of the public (whether continuously, periodically, or occasionally, and whether for 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 the place); and
- (b) includes any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational, or similar place that is so accessible or open to the public.

“privileged communication” has the meaning given to it in section 45.

“property”

- (a) means real or personal property of any description, whether situated in New Zealand or elsewhere and whether tangible or intangible; and
- (b) includes an interest in any real or personal property of that kind

“public transportation system” means all conveyances (for example, aircraft, trains, ships, ferries, trucks, buses, or taxis), facilities, buildings, and objects (whether publicly or privately owned) used in or for services that are available to the public for the transportation of persons or cargo.

“relevant date” has the meaning given to it in section 69(4).

“relevant place, facility, or system” has the meaning given to it in section 7(2).

“relevant State” has the meaning given to it in section 66(3).

“relevant States Parties” has the meaning given to it in section 63(2).

“specified agency” means

- (a) an intelligence and security agency; or**
- (b) the New Zealand Police.**

“specified terrorism convention” means any treaty specified in Schedule 3.

“State or government facility” means any conveyance (for example, an aircraft, train, ship, ferry, truck, bus, taxi, or car) or facility (whether permanent or temporary) used or occupied by any of the following persons in connection with their official duties:

- (a) representatives of a State;**
- (b) members of the executive, legislative, or judicial branch of the Government of a State;**
- (c) employees or officials of a State, or of any other public authority or entity;**
- (d) employees or officials of an intergovernmental organization.**

“suspicious property report” means a report under section 43 and that (except as provided in section 44(2)) contains the details specified in Schedule 5.

“suspicious transaction report” has the meaning referred to in section 44(5).

“terrorist act” is defined in section 5(1).

“terrorist act in armed conflict” means an act

- (a) that occurs in a situation of armed conflict; and**
- (b) the purpose of which, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act; and**
- (c) that is intended to cause death or serious bodily injury to a civilian or other person not taking an active part in the hostilities in that situation; and**
- (d) that is not excluded from the application of the Financing Convention by article 3 of that Convention.**

“terrorist bombing” means an offence against section 7(1)

“transaction” has the meaning referred to in section 44(5).

(2) For the purposes of this Act, a person must be treated as being ordinarily resident in New Zealand if

- (a) the person's home is in New Zealand; or**
- (b) the person is residing in New Zealand with the intention of residing in New Zealand indefinitely; or**
- (c) having resided in New Zealand with the intention of establishing his or her home in New Zealand, or with the intention of residing in New Zealand indefinitely, the person is outside New Zealand but has an intention to return to establish his or her home in New Zealand or to reside in New Zealand indefinitely.**

5. *Terrorist Act Defined*

(1) An act is a terrorist act for the purposes of this Act if

- (a) the act falls within subsection (2); or**
- (b) the act is an act against a specified terrorism convention (as defined in section 4(1)); or**
- (c) the act is a terrorist act in armed conflict (as defined in section 4(1)).**

(2) An act falls within this subsection if it is intended to cause, in any 1 or more countries, 1 or more of the outcomes specified in subsection (3), and is carried out for the purpose of advancing an ideological, political,

or religious cause, and with the following intention:

- (a) to induce terror in a civilian population; or
 - (b) to unduly compel or to force a government or an international organisation to do or abstain from doing any act.
- (3) The outcomes referred to in subsection (2) are
- (a) the death of, or other serious bodily injury to, 1 or more persons (other than a person carrying out the act);
 - (b) a serious risk to the health or safety of a population;
 - (c) destruction of, or serious damage to, property of great value or importance, or major economic loss, or major environmental damage, if likely to result in 1 or more outcomes specified in paragraphs (a), (b), and (d);
 - (d) serious interference with, or serious disruption to, an infrastructure facility, if likely to endanger human life;
 - (e) introduction or release of a disease-bearing organism, if likely to devastate the national economy of a country.
- (4) However, an act does not fall within subsection (2) if it occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.
- (5) To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person:
- (a) is carrying out an act for a purpose, or with an intention, specified in subsection (2); or
 - (b) intends to cause an outcome specified in subsection (3).

Compare: 1969 No 24 s2(1); 1987 No 74 s2(1); 1987 No 179 s2(1); Terrorism Act 2000 s 1 (UK); Criminal Code s 83.01(1) (Canada)

6. *Act Binds The Crown*

This Act binds the Crown.

PART 2- SUPPRESSION OF TERRORISM

TERRORIST BOMBING

7. *Terrorist Bombing*

(1) A person commits an offence who, intentionally and without lawful justification or excuse, delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a relevant place, facility, or system, with the intent to cause

(a) death or serious bodily injury; or

(b) extensive destruction

(i) of the relevant place, facility, or system; and

(ii) that results, or is likely to result, in major economic loss.

(2) In subsection (1), *relevant place, facility, or system* means

(a) a place of public use:

(b) a State or government facility:

(c) a public transportation system:

(d) an infrastructure facility.

(3) A person who commits terrorist bombing is liable on conviction on indictment to imprisonment for life or a lesser term.

Financing of terrorism

8. *Financing of terrorism*

(1) A person commits an offence who, directly or indirectly, wilfully and without lawful justification or reasonable excuse, provides or collects funds intending that they be used, or knowing that they are to be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.

(2) To avoid doubt, nothing in subsection (1) makes it an offence to provide or collect funds intending that they be used, or knowing that they are to be used, for the purpose of advocating democratic government or the protection of human rights.

(3) In a prosecution for financing of terrorism, it is not necessary for

the prosecutor to prove that the funds collected or provided were actually used, in full or in part, to carry out a terrorist act.

(4) A person who commits financing of terrorism is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

Dealing with property

9. Prohibition on dealing with property of, or derived or generated from property of, terrorist and associated entities

(1) A person commits an offence who, without lawful justification or reasonable excuse, deals with any property knowing that the property is

(a) property owned or controlled, directly or indirectly, by an entity for the time being designated under this Act as a terrorist entity or as an associated entity; or

(b) property derived or generated from any property of the kind specified in paragraph (a).

(2) An example of dealing with property with a reasonable excuse, for the purposes of subsection (1), is where the dealing with the property occurs in an act that does no more than satisfy essential human needs of (or of a dependant of) an individual designated under this Act.

(3) Subsection (1) does not apply

(a) if the Prime Minister has, under section 11, authorised the dealing with the property; or

(b) if the property concerned is the subject of a direction under section 48 and the dealing concerned forms part of the exercise by the Official Assignee of his or her powers under section 50 of the Proceeds of Crime Act 1991 (as modified and applied by section 51(a)).

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

(5) In this section, *deal with*, in relation to any property,

(a) means to use or deal with the property, in any way and by any means (for example, to acquire possession of, or a legal or an equitable interest in, transfer, pay for, sell, assign, or dispose of (including by way of gift) the property); and

(b) includes allowing the property to be used or dealt with, or facilitating the use of it or dealing with it.

(6) A reference in subsection (5) to the transfer of property that is a security includes a reference to a transfer of the security by way of loan, mortgage, pledge, or bailment, whether in respect to a legal or an equitable interest.

Compare: SR 2001/26 r3(2), r15

Making property, financial or related services, available

10. Prohibition on making property, financial or related services, available to terrorist and associated entities

(1) A person commits an offence who makes available, or causes to be made available, directly or indirectly, without lawful justification or reasonable excuse, any property, any financial or related services, either to, or for the benefit of, an entity, knowing that the entity is an entity for the time being designated under this Act as a terrorist entity or as an associated entity.

(2) To avoid doubt, nothing in subsection (1) makes it an offence to make property or services available, or to cause property or services to be made available, either to, or for the benefit of, a movement or organisation advocating democratic government or the protection of human rights and that is not involved in any way in the carrying out of terrorist acts.

(3) An example of making property available with a reasonable excuse, for the purposes of subsection (1), is where the property (for example, items of food, clothing, or medicine) is made available in an act that does no more than satisfy essential human needs of (or of a dependant of) an individual designated under this Act.

(4) Subsection (1) does not apply if the Prime Minister has, under section 11, authorised the making available of the property or services.

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

(6) In this section, *make available*, in relation to any property or services, means to make the property or services available in any way and by any means (for example, to send, transfer, deliver, or provide the property or services).

(7) A reference in subsection (6) to the transfer of property that is a security includes a reference to a transfer of the security by way of loan, mortgage, pledge, or bailment, whether in respect of a legal or an equitable interest.

Compare: SR 2001/26 r3(2), r16

Authorisations to deal with property, or to make property, or financial or related services, available

11. Authorisations by Prime Minister

(1) The Prime Minister may, by notice in writing, permit any activity or transaction or class or classes of activities or transactions that would otherwise be prohibited by section 9(1) or section 10(1).

(2) Any authorisation of that kind

(a) may be subject to terms or conditions; and

(b) may be amended, revoked, or revoked and replaced.

(3) If a person has obtained an authorization of that kind, another person involved in carrying out the activity or transaction or class or classes of activities or transactions to which the authorization relates is not subject to section 9(1) or section 10(1).

(4) However, subsection (3) does not apply if

(a) the authorization is subject to terms or conditions imposed under subsection (2)(a); and

(b) those terms or conditions are not satisfied.

Compare: SR 2001/26 r15(2), r16(2); Criminal Code S 83.09 (Canada)

Recruitment of members of terrorist groups

12. Recruiting members of terrorist groups

(1) A person commits an offence who recruits another person as a member of a group or organisation, knowing that the group or organisation is

(a) an entity that is for the time being designated under this Act as a terrorist entity; or

(b) an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

(2) A person who commits an offence against subsection (1) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

Participation in terrorist groups

13. Participating in terrorist groups

(1) A person commits an offence who participates in a group or organisation for the purpose stated in subsection (2), knowing that the group or organisation is

(a) an entity that is for the time being designated under this Act as a terrorist entity; or

(b) an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

(2) The purpose referred to in subsection (1) is to enhance the ability of any entity (being an entity of the kind referred to in subsection (1)(a) or (b)) to carry out, or to participate in the carrying out of, 1 or more terrorist acts.

(3) A person who commits an offence against subsection (1) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

Extraterritorial jurisdiction

14. Offences also apply in certain cases outside New Zealand

(1) Each of sections 7 to 13 applies in respect of acts that occurred wholly outside New Zealand, as provided in sections 15 to 18.

(2) Subsection (1) does not affect the application of sections 7 to 13 in respect of

(a) acts that occurred wholly within New Zealand; or

(b) an offence that, under section 7 of the Crimes Act 1961, is deemed to be committed in New Zealand; or

(c) acts that, under section 8A of that Act, are deemed to have taken place within New Zealand.

15. Offences apply to acts outside New Zealand by New Zealand citizens or on New Zealand aircraft and ships

Proceedings may be brought in a New Zealand court for any offence against this Act (other than one against section 43 or section 47) if the acts alleged to constitute the offence occurred wholly outside New Zealand, but were done

- (a) by a New Zealand citizen:
- (b) by a person who is ordinarily a resident in New Zealand but is not a citizen of any State:
- (c) by any other person on board any aircraft
 - (i) registered or required to be registered in New Zealand under the Civil Aviation Act 1990; or
 - (ii) for the time being used as an aircraft of the New Zealand Defence Force:
- (d) by any other person on board any ship
 - (i) registered under the Ship Registration Act 1992; or
 - (ii) not registered under that Act but required to be registered under that Act; or
 - (iii) for the time being used as a ship of the New Zealand Defence Force.

16. Further acts outside New Zealand to which terrorist bombing applies

Proceedings may also be brought in a New Zealand court for terrorist bombing if the acts alleged to constitute the offence occurred wholly outside New Zealand, but were done

- (a) against a New Zealand citizen; or
- (b) against a State or government facility of New Zealand abroad (for example, a New Zealand embassy, or other New Zealand diplomatic or consular premises); or
- (c) in an attempt to compel the Government of New Zealand to do or abstain from doing any act.

17. Further acts outside New Zealand to which financing of terrorism applies

Proceedings may also be brought in a New Zealand court for financing of terrorism if the acts alleged to constitute the offence occurred wholly outside

New Zealand, but were directed towards, or resulted in, 1 or more terrorist acts being done

- (a) within New Zealand; or**
- (b) against a New Zealand citizen; or**
- (c) against a State or government facility of New Zealand abroad (for example, New Zealand diplomatic or consular premises); or**
- (d) in an attempt to compel the Government of New Zealand to do or abstain from doing any act.**

18. Offences also apply to acts outside New Zealand if alleged offender is in New Zealand and is not extradited

Proceedings may also be brought in a New Zealand court for terrorist bombing or financing of terrorism if the acts alleged to constitute the offence occurred wholly outside New Zealand, but

- (a) there is present in New Zealand a person alleged to have committed an offence referred to in (as the case requires)**
 - (i) article 2 of the Bombings Convention; or**
 - (ii) article 2 of the Financing Convention; and**
- (b) the person is not extradited to (as the case requires)**
 - (i) a State Party to the Bombings Convention that has established jurisdiction in accordance with article 6(1) or (2) of that Convention; or**
 - (ii) a State Party to the Financing Convention that has established jurisdiction in accordance with article 7(1) or (2) of that Convention.**

19. Application of Crimes Act 1961

The following sections of the Crimes Act 1961 do not apply in respect of any offence against this Act (except one against section 43 or section 47):

- (a) section 8 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand):**
- (b) section 400 (which requires the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft).**

Interim designation

20. *Interim designation as terrorist or associated entity*

(1) The Prime Minister may designate an entity as a terrorist entity under this section if the Prime Minister has good cause to suspect that the entity has knowingly carried out, or has knowingly participated in the carrying out of, 1 or more terrorist acts.

(2) On or after designating an entity as a terrorist entity under this Act, the Prime Minister may designate 1 or more other entities as an associated entity under this section.

(3) The Prime Minister may exercise the power given by subsection (2) only if the Prime Minister has good cause to suspect that the other entity

(a) is knowingly facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, the terrorist entity (for example, by financing those acts, in full or in part); or

(b) is acting on behalf of, or at the direction of,

(i) the terrorist entity, knowing that the terrorist entity has done what is referred to in subsection (1); or

(ii) an entity designated as an associated entity under subsection (2) and paragraph (a), knowing that the associated entity is doing what is referred to in paragraph (a); or

(c) is an entity (other than an individual) that is wholly owned or effectively controlled, directly or indirectly, by the terrorist entity, or by an entity designated under subsection (2) and paragraph (a) or paragraph (b).

(4) Before designating an entity as a terrorist or associated entity under this section, the Prime Minister must consult with the Attorney-General and the Minister of Foreign Affairs and Trade about the proposed designation.

(5) After an entity is designated as a terrorist or associated entity under this section, the Prime Minister and the Attorney-General must, if practicable before the making of the designation is publicly notified under section 21(c) and, if not so practicable, as soon as possible after that notification,

(a) advise the Leader of the Opposition of the making of the designation; and

(b) if requested to do so by the Leader of the Opposition, brief that Leader as to the factual basis for the making of the designation.

21. Further provisions relating to interim designation

A designation under section 20

(a) may be made in respect of an entity only once, and therefore may not be made in respect of an entity who

(i) is the subject of an earlier designation made under section 20 that has not yet expired or been revoked; or

(ii) was the subject of a designation under section 20 that has expired or been revoked:

(b) takes effect on being made, and must be made in writing signed by the Prime Minister:

(c) must be publicly notified

(i) by a notice (in the prescribed form (if any)) indicating that it has been made published in the *Gazette* as soon as practicable; and

(ii) in any other way the Prime Minister directs under section 28(1):

(d) must also be notified

(i) by a notice (in the prescribed form (if any)) indicating that it has been made given (in the prescribed manner (if any)) with all reasonable speed to the designated entity, if practicable, where that entity or a representative of it is in New Zealand; and

(ii) by a notice indicating that it has been made given to any other persons or bodies, as the Prime Minister directs under section 28(2):

(e) expires on the close of the 30th day after the day on which it is made, unless it has earlier been revoked by the Prime Minister under section 34, or by the making of a final designation in respect of the entity concerned, under section 22:

(f) operates until it expires or is revoked but, if it is made the subject of any judicial review (whether under Part 1 of the Judicature Amendment Act 1972 or otherwise) or other proceedings before a court and is not sooner revoked under section 23(b) or section 34, continues to operate until those proceedings are withdrawn or finally determined.

Final designation

22. Final designation as terrorist or associated entity

(1) The Prime Minister may designate an entity as a terrorist entity under this section if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, 1 or more terrorist acts.

(2) On or after designating an entity as a terrorist entity under this Act, the Prime Minister may designate 1 or more other entities as an associated entity under this section.

(3) The Prime Minister may exercise the power given by subsection (2) only if the Prime Minister believes on reasonable grounds that the other entity

(a) is knowingly facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, the terrorist entity (for example, by financing those acts, in full or in part); or

(b) is acting on behalf of, or at the direction of,

(i) the terrorist entity, knowing that the terrorist entity has done what is referred to in subsection (1); or

(ii) an entity designated as an associated entity under subsection (2) and paragraph (a), knowing that the associated entity is doing what is referred to in paragraph (a); or

(c) is an entity (other than an individual) that is wholly owned or effectively controlled, directly or indirectly, by the terrorist entity, or by an entity designated under subsection (2) and paragraph (a) or paragraph (b).

(4) Before designating an entity as a terrorist or associated entity under this section, the Prime Minister must consult with the Attorney-General about the proposed designation.

23. Further provisions relating to final designation

A designation under section 22

(a) may be made in respect of an entity who

(i) has never been the subject of a designation made under section 20; or

(ii) is the subject of a designation under section 20 that has not yet expired or been revoked; or

(iii) was the subject of a designation under section 20 that has expired or been revoked:

(b) if it is made in respect of an entity who is the subject of a designation made under section 20 and that has not yet expired or been revoked, revokes that designation under section 20:

(c) may be made in respect of an entity who was earlier the subject of a designation made under section 22 and that has expired or been revoked (the earlier designation) only if it is based on information that became available after the expiry or revocation of the earlier designation and is significantly different from the information on which the earlier designation was based:

(d) takes effect on being made, and must be made in writing signed by the Prime Minister:

(e) must be publicly notified

(i) by a notice (in the prescribed form (if any)) indicating that it has been made published in the *Gazette* as soon as practicable; and

(ii) in any other way the Prime Minister directs under section 28(1):

(f) must also be notified

(i) by a notice (in the prescribed form (if any)) indicating that it has been made given (in the prescribed manner (if any)) with all reasonable speed to the designated entity, if practicable, where that entity or a representative of it is in New Zealand; and

(ii) by a notice indicating that it has been made given to any other persons or bodies, as the Prime Minister directs under section 28(2):

(g) expires, under section 35, 3 years after the date on which it took effect, unless it has earlier been

(i) revoked, by the Prime Minister, under section 34; or

(ii) extended by an order of the High Court made under section 35(2), or by an application for an order of that kind having been made, but not withdrawn or finally determined:

(h) operates until it expires or is revoked but (and without limiting section 35(1) or section 36(1)), if it is made the subject of any judicial review (whether under Part 1 of the Judicature Amendment Act 1972 or otherwise) or other proceedings before a court and is not sooner revoked under section 34, continues to operate until those proceedings are withdrawn or finally determined.

Further provisions relating to interim and final designations

24. Entity or property need not be in New Zealand

An entity may be designated under section 20 or section 22 whether or not any of the following is in New Zealand:

- (a) the entity:
- (b) property owned or controlled, directly or indirectly, by the entity:
- (c) property derived or generated from any property of the kind referred to in paragraph (b).

25. Carrying out and facilitating terrorist acts

(1) For the purposes of this Act, a terrorist act is *carried out* if any 1 or more of the following occurs:

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

(2) For the purposes of this Act, a terrorist act is facilitated only if the facilitator knows that a terrorist act is facilitated, but this does not require that

- (a) the facilitator knows that any specific terrorist act is facilitated:
- (b) any specific terrorist act was foreseen or planned at the time it was facilitated:
- (c) any terrorist act was actually carried out.

26. *Content of notice to designated entity*

A notice under section 21(d)(i) or section 23(f)(i) (to notify the designated entity of the making of the designation under section 20 or section 22)

- (a) must state the section under which the designation is made, and whether the entity concerned is designated as a terrorist entity or as an associated entity:
- (b) may describe the entity concerned by reference to any name or names or associates or other details by which the entity may be identified:
- (c) must state the maximum period for which the designation may have effect or, if it is made under section 22, the maximum period for which it may have effect without being extended:
- (d) must include general information about how it may be reviewed and revoked:
- (e) must include any other information specified for the purposes of this paragraph by regulations made under this Act.

27. *Content of notice to public and others*

- (1) Subsection (2) applies to
 - (a) a notice under section 21(c)(i) or section 23(e)(i) (to notify publicly the making of a designation under section 20 or section 22); and
 - (b) a notice under section 21(d)(ii) or section 23(f)(ii) (to notify specified persons or bodies of the making of a designation under section 20 or section 22).
- (2) The notice
 - (a) must state the section under which the designation is made, and whether the entity concerned is designated as a terrorist entity or as an associated entity:
 - (b) may describe the entity concerned by reference to any name or names or associates or other details by which the entity may be identified:
 - (c) must state the maximum period for which the designation may have effect or, if it is made under section 22, the maximum period for which it may have effect without being extended:

(d) must include any other information specified for the purposes of this paragraph by regulations made under this Act:

(e) may include details of all earlier designations under this Act that have not yet expired or been revoked, so as to provide details of all entities currently designated under this Act.

28. Further notification of making of designation

(1) The Prime Minister may, for the purposes of section 21(c)(ii) or section 23(e)(ii), direct that the making of a designation under section 20 or section 22 be publicly notified (other than by notice in the *Gazette*, and either in the prescribed manner or form or both (if any) or in any other manner or form or both that the Prime Minister thinks fit).

(2) The Prime Minister may, for the purposes of section 21(d)(ii) or section 23(f)(ii), direct that notice of the making of a designation under section 20 or section 22 be given (either in the prescribed manner or in any other manner that the Prime Minister thinks fit) to any persons or bodies that the Prime Minister thinks fit (for example, to any registered banks or other persons

(a) who may possess property which may be property to which section 9(1) relates; or

(b) who may make available property or services to which section 10(1) may relate).

29. Designations not invalid for certain reasons

No designation under section 20 or section 22 is invalid just because

(a) the entity concerned was not, before the designation was made, given notice that it may be made, or a chance to comment on whether it should be made, or both:

(b) the making of it has not been notified, or notice of the making of it has not been given, in the manner or form required by section 21 or section 23.

Material on which designations may be based

30. Information available to Prime Minister

In considering whether to make or to revoke a designation under section 20 or section 22 or section 34, the Prime Minister may take into account any relevant information, including classified security information.

31. United Nations Security Council information

(1) Information to which this section applies is, in the absence of evidence to the contrary, sufficient evidence of the matters to which it relates.

(2) This section applies to information that is available to the Prime Minister and that indicates that the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, or a Committee established by that Council and acting pursuant to a resolution made under that Chapter, considers that an entity is

(a) an entity that has carried out, or has participated in the carrying out of, 1 or more terrorist acts; or

(b) an entity that is facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, another entity; or

(c) an entity that is acting on behalf of, or at the direction of, an entity of the kind referred to in paragraph (a) or paragraph (b); or

(d) an entity (other than an individual) that is wholly owned or effectively controlled, directly or indirectly, by an entity of a kind referred to in paragraph (a) or paragraph (b) or paragraph (c).

(3) Information must be treated as if it were information of the kind referred to in subsection (2) if the information is available to the Prime Minister and indicates that an entity is

(a) an entity designated, by or under 1 or more resolutions of the Security Council relating to Afghanistan, as an entity associated with Usama bin Laden, and against whom a sanction specified in those resolutions, and of the kind given effect to by this Act, is to be imposed; or

(b) an entity designated, by or under 1 or more resolutions of the Security Council relating to Afghanistan, as an entity owned or controlled (directly or indirectly) by, or associated with, the Taliban, and against whom a sanction specified in those resolutions, and of the kind given effect to by this Act, is to be imposed.

32. Classified security information defined

(1) In this Act, classified security information means information

(a) relevant to whether there are or may be grounds for designating an identifiable entity under this Act as a terrorist entity or as an associated entity; and

(b) held by a specified agency (as defined in section 4(1)); and

(c) that the head of the specified agency certifies in writing (in the prescribed form (if any)) cannot be disclosed except to the extent provided in section 38 or section 39 because, in the opinion of the head of the specified agency

(i) the information is information of a kind specified in subsection (2); and

(ii) disclosure of the information would be disclosure of a kind specified in subsection (3).

(2) Information falls within subsection (1)(c)(i) if it

(a) might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the specified agency; or

(b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of the specified agency; or

(c) has been provided to the specified agency by the government of another country or by an agency of a government of another country or by an international organisation, and is information that cannot be disclosed by the specified agency because the government or agency or organisation by which the information has been provided will not consent to the disclosure.

(3) Disclosure of information falls within subsection (1)(c)(ii) if the disclosure would be likely

(a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or

(b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of another country or any agency of such a government, or by any international organisation; or

(c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or

(d) to endanger the safety of any person.

Compare: 1987 No 74 s114B(1)

Review, revocation, and expiry of designations

33. *Judicial review of designations*

Nothing in this Act prevents a person from bringing any judicial review (whether under Part 1 of the Judicature Amendment Act 1972 or otherwise) or other proceedings before a court arising out of, or relating to, the making of a designation under this Act.

34. *Revocation of designations*

(1) The Prime Minister may at any time revoke a designation made under section 20 or section 22, either on the Prime Minister's own initiative or on an application in writing for the purpose

(a) by the entity who is the subject of the designation; or

(b) by a third party with an interest in the designation that, in the Prime Minister's opinion, is an interest apart from any interest in common with the public.

(2) Without limiting subsection (1)(b), a party may have an interest in a designation apart from any interest in common with the public through

(a) possessing or controlling, or having an interest in, property to which section 9 applies as a result of the designation; or

(b) making available property or services to which section 10 applies as a result of the designation; or

(c) having an especially close association with the designated entity or its interests or objectives.

(3) An application under subsection (1) for revocation of a designation must be based on the grounds

(a) that the designation should not stand because the entity concerned does not satisfy the test stated in section 20(1) or (3) or, as the case requires, in section 22(1) or (3); or

(b) that the entity concerned is no longer involved in any way in acts of the kind that made, or that would make, the entity eligible for designation.

(4) However, the Prime Minister may not refuse an application to revoke a designation under section 20 or section 22 without having first consulted with the Attorney-General about the proposed refusal.

(5) Except as provided in subsection (4), subsection (1) overrides every other provision of this Act.

Compare: 1987 No 74 s114N

35. Designations under section 22 to expire after 3 years unless extended by order of high court

(1) A designation under section 22 expires 3 years after the date on which it takes effect, unless it is earlier

(a) revoked; or

(b) extended by an order under subsection (2); or

(c) made the subject of an application for an order under subsection (2), in which case (and without limiting section 36(1)) the designation continues to operate until the application is withdrawn or finally determined.

(2) The High Court may, on an application for the purpose by the Attorney-General, order that a designation made under section 22 remain in force for 3 years after the making of the order.

(3) On an application for the purpose by the Attorney-General before the expiry of an order under subsection (2), the High Court may make another order under subsection (2) extending the designation concerned for a further 3 years.

(4) The Attorney-General may make 2 or more applications under subsection (3), and the Court may make 2 or more orders under subsection (2), in respect of the same designation.

(5) An application under subsection (2) or subsection (3) must be served (in any manner, and within any time, the Court may direct) on such persons as the Court may specify.

Status Compendium

36. Applications under section 35 and related proceedings

(1) Despite section 35(1) to (3) if, before the determination of an application under section 35(2) or (3) in respect of a designation, the designation is or becomes the subject of any judicial review (whether under Part 1 of the Judicature Amendment Act 1972 or otherwise) or other proceedings before a court,

(a) the High Court must determine the application (if it continues to be necessary to do so) after those proceedings are withdrawn or finally determined; and

(b) if not found in the proceedings to be or to have been invalid, the designation continues to operate until the High Court has determined the application.

(2) If, on making an application under section 35(2) or (3), the Attorney-General knows that there is in New Zealand specific property that is owned or controlled, directly or indirectly, by the entity who is the subject of the designation concerned, or property derived or generated from any property of that kind,

(a) the Attorney-General may also make an application for an order under section 55 in respect of that property; and

(b) the High Court must hear and determine the 2 applications together, unless it is impracticable to do so.

37. Grounds for orders under section 35(2)

The High Court must not make an order under section 35(2) unless the Attorney-General satisfies the Court on the balance of probabilities that the entity who is the subject of the designation concerned

(a) is the subject of criminal proceedings in a national or international court or tribunal (within or outside New Zealand), for an offence relating

(i) to carrying out, or to participating in the carrying out of, 1 or more terrorist acts; or

(ii) to facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, another entity; or

(iii) to acting on behalf of, or at the direction of, another entity that has done, or is doing, what is referred to in subparagraph (i) or subparagraph (ii); or

(b) has been convicted in criminal proceedings in a national or international court or tribunal (whether within or outside New Zealand), being proceedings not subject to any appeal and that are finally determined, of an offence relating

(i) to carrying out, or to participating in the carrying out of, 1 or more terrorist acts; or

(ii) to facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, another entity; or

(iii) to acting on behalf of, or at the direction of, another entity that has done, or is doing, what is referred to in subparagraph (i) or subparagraph (ii); or

- (c) either
 - (i) has knowingly carried out, or knowingly participated in the carrying out of, 1 or more terrorist acts; or
 - (ii) is knowingly facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, another entity; or
 - (iii) is acting on behalf of, or at the direction of, another entity, knowing that the other entity has done, or is doing, what is referred to in subparagraph (i) or subparagraph (ii); or
- (d) is an entity (other than an individual) that is wholly owned, or effectively controlled, directly or indirectly, by an entity that has done, or is doing, what is referred to in paragraph (c)(i) or (ii) or (iii).

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

- (1) On or before determining an application under section 35 or section 55, the High Court may give any directions and make any orders that it thinks appropriate in the circumstances of the case.
- (2) The Court must determine whether to grant the application on the basis of information available to it (whether or not that information has been disclosed to or responded to by all parties to the proceedings).
- (3) If information presented or proposed to be presented in support of the application includes classified security information,
 - (a) the proceedings must be heard and determined by the Chief Justice, or by 1 or more Judges nominated by the Chief Justice, or both; and
 - (b) the Court must, on a request for the purpose by the Attorney-General and if satisfied that it is desirable to do so for the protection of (either all or part of) the classified security information, receive or hear (the part or all of) the classified security information in the absence of
 - (i) the designated entity concerned; and
 - (ii) all barristers or solicitors (if any) representing that entity; and
 - (iii) members of the public.
- (4) Without limiting subsection (3), if the designated entity concerned participates in proceedings relating to an application under section 35 or section 55,

(a) the Court must approve a summary of the information of the kind referred to in section 32(2) that is presented by the Attorney-General except to the extent that a summary of any particular part of the information would itself involve disclosure that would be likely to prejudice the interests referred to in section 32(3); and

(b) on being approved by the Court (with or without amendments directed by the Court in accordance with paragraph (a)), a copy of the statement must be given to the entity concerned.

(5) The procedure specified in subsections (2), (3)(b), and (4) applies with all necessary modifications to an appeal under section 41 or section 58.

(6) Nothing in this section or in section 39 limits section 27 of the Crown Proceedings Act 1950 or any rule of law that authorizes or requires the withholding of a document or the refusal to answer a question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(7) Subsections (2) to (6) and section 39(3) and (4) apply despite any enactment or rule of law to the contrary.

39. Procedure in other cases involving classified security information

(1) This section applies to any proceedings in a court (except for an appeal under section 41 or section 58)

(a) arising out of, or relating to, the making of a designation under this Act; and

(b) in which the Crown is a defendant or respondent.

(2) On or before determining the proceedings, the Court may give any directions and make any orders that it thinks appropriate in the circumstances of the case.

(3) If information presented or proposed to be presented by the Crown includes classified security information, then section 38(3) (but not also section 38(4)) applies with all necessary modifications to the proceedings as if the proceedings were an application to the High Court under section 35 or section 55. However, if the proceedings are before the Court of Appeal, section 38(3)(a) does not apply.

(4) In determining the proceedings, the Court may take into account any relevant classified security information available to it, even though that information has not been disclosed to or responded to by other parties to the proceedings.

40. *Ancillary general practices and procedures to protect classified security information*

(1) Any general practices and procedures that may be necessary to implement the procedures specified in sections 38 and 39 and to ensure that classified security information is protected in all proceedings to which those sections relate must be agreed between the Chief Justice and the Attorney-General as soon as practicable after the commencement of this section, and revised from time to time.

(2) Without limiting the generality of subsection (1), general practices and procedures may be agreed under that subsection on the following matters:

(a) measures relating to the physical protection of the information during all proceedings to which sections 38 and 39 relate:

(b) the manner in which the information may be provided to the Court:

(c) measures to preserve the integrity of the information until any appeals are withdrawn or finally determined.

41. *Appeal against decision on application under section 35*

(1) A party to an application under section 35 may appeal to the Court of Appeal against the decision of the High Court.

(2) Subject to sections 38 to 40, the procedure for the appeal must be in accordance with rules of Court.

42. *Notification of revocation, expiry, or invalidity of designations*

(1) If a designation under this Act expires or is revoked or is found to be or to have been invalid, under section 34 or section 35 or by virtue of any judicial review (whether under Part 1 of the Judicature Amendment Act 1972 or otherwise) or other proceedings before a court, the Prime Minister must

(a) ensure that notice of the revocation or expiry or invalidity is published in the *Gazette* as soon as practicable; and

(b) take all reasonable steps to ensure that notice of the revocation or expiry or invalidity is given, in the manner and form required by section 21(d) or section 23(f), to every person and body specified in subsection (2) who is not already aware of it.

(2) The persons and bodies referred to in subsection (1)(b) are every person or body to whom notice of the making of the designation was given under section 21(d) or section 23(f).

Duty to report suspicions relating to property

43. Suspicions that property owned or controlled by designated entities, etc, to be reported

- (1) This section applies to
 - (a) property owned or controlled, directly or indirectly, by an entity designated under this Act as a terrorist or associated entity; and
 - (b) property derived or generated from any property of the kind specified in paragraph (a).
- (2) A financial institution or other person in possession or immediate control of property that the financial institution or other person suspects on reasonable grounds is or may be property to which this section applies must, as soon as practicable after forming that suspicion, report it to the Commissioner of Police, in accordance with section 44.
- (3) Nothing in subsection (2) requires any lawyer to disclose any privileged communication (as defined in section 45).
- (4) Every person who knowingly contravenes subsection (2) commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 1 year.
- (5) In this section, *financial institution* has the meaning referred to in section 44(5).

Compare: 1996 No 9 s15(1)

44. Nature of suspicious property report

- (1) Except as provided in subsection (2), every report under section 43 must
 - (a) contain the details specified in Schedule 5; and
 - (b) if made by a financial institution, be signed by someone authorized to sign reports under section 43 on behalf of the financial institution (unless the report is forwarded by email or another similar means of communication); and
 - (c) if made by any other person, be signed by the person or by someone authorized to sign reports under section 43 on behalf of the person (unless the report is forwarded by email or another similar means of communication); and

(d) be forwarded, in writing, to the Commissioner of Police at Police National Headquarters at Wellington

(i) by way of transmission by fax; or

(ii) by another means (including, without limitation, by email or another similar means of communication) that may be agreed from time to time between that Commissioner and the financial institution or person concerned.

(2) However, if the urgency of the situation requires, a report under section 43 may be made orally to any member of the police authorized for the purpose by the Commissioner of Police, but in any case of that kind the financial institution or other person must, as soon as practicable, forward to that Commissioner a report that complies with the requirements of subsection (1).

(3) The Commissioner of Police may confer the authority to receive a report under subsection (2) on any specified member of the police or on members of the police of any specified rank or class, or on any member or members of the police for the time being holding any specified office or specified class of offices.

(4) If a report under section 43 is made by or on behalf of a financial institution in respect of property that came into the possession or immediate control of the financial institution through a transaction conducted or proposed to be conducted through the financial institution, the financial institution need not make a suspicious transaction report in respect of the transaction or proposed transaction unless asked to do so by or on behalf of the Commissioner of Police.

(5) In this section, section 47, and Schedule 5, facility, financial institution, suspicious transaction report, and transaction have the meanings given to them in section 2(1) of the Financial Transactions Reporting Act 1996.

Compare: 1996 No 9 s15(2)-(4)

45. *Privileged communication defined*

(1) For the purposes of section 43(3), a communication is a privileged communication only if

(a) it is a confidential communication, whether oral or written, passing between

(i) a lawyer in his or her professional capacity and another lawyer in that capacity; or

(ii) a lawyer in his or her professional capacity and his or her client, whether made directly or indirectly through an agent of either; and

(b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

(2) However, where the information consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer within the meaning of section 2 of the Law Practitioners Act 1982.

(3) For the purposes of this section, references to a lawyer include a firm in which he or she is a partner or is held out to be a partner.

Compare: 1996 No 9 s19

46. *Protection of persons*

(1) A person has immunity from civil, criminal, or disciplinary proceedings under subsection (2) if the person

(a) acts in purported compliance with the requirements of section 9 or section 10 or both; or

(b) reports a suspicion to the Commissioner of Police under section 43; or

(c) otherwise discloses information to the Commissioner of Police in connection with a report of that kind.

(2) No civil, criminal, or disciplinary proceedings lie against a person to whom subsection (1) applies

(a) in respect of the acts of the person in good faith and with reasonable care in purported compliance with the requirements of section 9 or section 10 or both; or

(b) in respect of the report or disclosure, or the manner of the report or disclosure, by that person, of the information referred to in subsection (1)(b) and (c); or

(c) for any consequences that follow from the report or disclosure of that information.

(3) However, subsection (2)(b) and (e) do not apply if the information was reported or disclosed in bad faith, or without reasonable care having been taken in determining, before the report or disclosure, that the property is or may be property to which section 43 applies.

Compare: 1996 No 9 s17

47. Protection of identity of persons making reports

(1) This section applies in respect of the following information:

(a) any report under section 43:

(b) any information the disclosure of which will identify, or is reasonably likely to identify, any person

(i) as a person who, in his or her capacity as an officer, employee, or agent of a financial institution, has handled or identified property that was the subject of a report under section 43; or

(ii) as a person who has prepared a report under section 43; or

(iii) as a person who has made a report under section 43:

(c) any information that discloses or is reasonably likely to disclose the existence of a report under section 43.

(2) No member of the police may disclose any information to which this section applies except for the purposes of the enforcement of this Act, or for the purposes of the detection, investigation, and prosecution of an offence under this Act.

(3) Nothing in subsection (2) limits the provision of assistance under the Mutual Assistance in Criminal Matters Act 1992.

(4) No person may disclose, in any judicial proceeding (within the meaning of section 108 of the Crimes Act 1961) any information to which this section applies, unless the Judge or, as the case requires, the person presiding at the proceeding, is satisfied that the disclosure of the information is necessary in the interests of justice.

(5) Every person who knowingly contravenes subsection (4) commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000.

Compare: 1996 No 9 s21

Management of property subject to section 9

48. Direction that official assignee take control of property

(1) The Prime Minister may, if satisfied that it is desirable to do so, direct the Official Assignee to take custody and control of property in New Zealand, if an entity is subject to a designation under section 22 and the Prime Minister believes on reasonable grounds that the property is

(a) property owned or controlled, directly or indirectly, by the entity; or

(b) property derived or generated from property of the kind referred to in paragraph (a).

(2) The direction

(a) must be in writing signed by the Prime Minister; and

(b) must specify the property concerned; and

(c) may be subject to any terms and conditions the Prime Minister specifies.

(3) A person who has custody or control of property specified in the direction must allow the Official Assignee to take custody and control of that property in accordance with the direction.

Compare: 1991 No 120 s42(1)(b)

49. Notice of direction

(1) Notice of the making of a direction under section 48 must be given

(a) with all reasonable speed to the designated entity concerned, if practicable, where that entity or a representative of it is in New Zealand; and

(b) to any other person that the Prime Minister has reason to believe may have an interest in the property concerned.

(2) No direction under section 48 is invalid just because notice of the making of it has not been given in the manner required by subsection (1)(a) or (b).

50. *Variation, revocation, or expiry of direction*

- (1) Having made a direction under section 48, the Prime Minister may**
 - (a) make another direction varying**
 - (i) the property to which the direction relates:**
 - (ii) terms and conditions to which the direction is subject:**
 - (b) revoke the direction under section 48.**
- (2) The powers given by subsection (1)(a) and (b) are exercisable at any time after the making of the direction, and either on the Prime Minister's own initiative or on an application for the purpose in writing by or on behalf of the Official Assignee or a person who claims an interest in the property concerned.**
- (3) If not earlier revoked, a direction under section 48 in relation to property of an entity expires**
 - (a) on the entity ceasing to be subject to the designation under section 22; or**
 - (b) on a forfeiture order being made under section 55 in relation to the property concerned, in which case section 54 of the Proceeds of Crime Act 1991 (as modified and applied by section 57(c) of this Act) applies.**

51. *Further provisions on management of property subject to section 9*

The following sections of the Proceeds of Crime Act 1991 apply, with the following (and all other necessary) modifications, to property that is the subject of a direction under section 48, as if that direction were a restraining order and a direction under section 42(1) of that Act:

- (a) section 50 (which relates to powers of the Official Assignee to preserve the property):**
- (b) sections 57 and 58 (which relate to registration of directions, and make it an offence to dispose of or deal with the property in contravention of a direction, knowing that the direction has been made in respect of the property):**
- (c) section 59 (which relates to applications to the High Court for orders that certain dispositions or dealings be set aside, except that the applications must be made by the Attorney-General, not by the Solicitor-General):**

(d) section 61 (which relates to the Official Assignee's liability for payment of rates, etc, on the property):

(e) section 62 (which relates to an indemnity for the Official Assignee, except that the indemnity must relate only to the exercise or performance, or purported exercise or performance, or omission to exercise or perform, functions, duties, and powers of the Official Assignee under this Act):

(f) section 63, except subsection (1)(b)(i) (which section relates to costs recoverable by the Official Assignee, and any regulations made under that Act for the purposes of that section apply, with all necessary modifications, accordingly):

(g) sections 86 and 87 (which relate to the Official Assignee making and revoking delegations, except that the delegations must relate only to functions, duties, and powers of the Official Assignee under this Act).

Relief for third parties if property is subject to section 9 or application for forfeiture, or is forfeited

52. *Third parties may apply for relief*

(1) A person who claims an interest in specified property that is subject to the prohibition in section 9 (not being property to which subsection (2) applies) may apply to the High Court for an order under section 54.

(2) A person who claims an interest in specified property that is the subject of an application, under section 55(1), for an order under section 55 (an order that the property is forfeited to the Crown) may, before the order under section 55 is made, apply to the High Court for an order under section 54.

(3) If not prevented by section 53, a person who claims an interest in specified property forfeited to the Crown under an order under section 55 may apply to the High Court for an order under section 54

(a) within 6 months after the date on which the order under section 55 is made; or

b) within any further time the Court allows on an application for that purpose made before or after the end of that 6-month period.

(4) No entity who is the subject of the designation concerned may make an application under this section.

(5) A person who makes an application under this section must serve notice of the application on the Attorney-General, who is a party to any proceedings on the application.

Compare: 1991 No 120 s17(1)-(3), (7)

53. Limits on applications under section 52(3)

- (1) A person on whom notice of the application for an order under section 55, or of any amendment to the application, was served, or who appeared at the hearing of the application, may apply under section 52(3) only with the leave of the Court.
- (2) The Court must not grant leave unless there are special reasons for doing so.
- (3) Without limiting the generality of subsection (2), the Court may grant leave if it is satisfied
 - (a) that the applicant had good reason for failing to attend the hearing of the application for an order under section 55; or
 - (b) that evidence proposed to be adduced by the applicant in connection with the application under section 52(3) was not reasonably available to the applicant at the time of the hearing of the application for the order under section 55.

Compare: 1991 No 120 s17(4)-(6)

54. Court may grant relief to third party

- (1) Subsection (2) applies where
 - (a) a person applies to the High Court under section 52(1) or (2) or (3) in respect of an interest in property; and
 - (b) the Court is satisfied that the applicant's claim to that interest is valid.
- (2) The Court must, subject to subsection (3), make an order declaring the nature, extent, and value of the applicant's interest in the property and,
 - (a) if the application is under section 52(1), declaring that the interest is no longer subject to the prohibition in section 9;
 - (b) if the application is under section 52(2),
 - (i) directing that the interest must not be included in an order under section 55 made in respect of the proceedings that gave rise to the application; and

- (ii) declaring that the interest is no longer subject to the prohibition in section 9:
- (c) if the application is under section 52(3), either
 - (i) directing the Crown to transfer the interest to the applicant; or
 - (ii) declaring that there is payable by the Crown to the applicant an amount equal to the value of the interest declared by the Court.
- (3) The Court may, if it thinks fit, refuse to make an order under subsection (2), because it is satisfied that
 - (a) the applicant was knowingly involved in any way in the carrying out of the terrorist acts that are the basis of the designation of the entity concerned, or is wholly owned or effectively controlled, directly or indirectly, by that entity; or
 - (b) if the applicant acquired the interest at the time of or after the designation of the entity concerned, the applicant did not acquire the interest in the property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, property subject to the prohibition in section 9.
- (4) However, nothing in subsection (3) requires a refusal to make an order under subsection (2), or limits the circumstances in which the Court may refuse to make an order of that kind.

Compare: 1991 No 120 s18

Forfeiture

55. Forfeiture of property by order of High Court

- (1) The High Court may, on an application by the Attorney-General for the purpose, order that specified property is forfeited to the Crown if it is in New Zealand and is
 - (a) property owned or controlled, directly or indirectly, by an entity who is the subject of a designation under section 22; or
 - (b) property derived or generated from property of the kind referred to in paragraph (a).
- (2) However, an order of that kind may only be made if

- (a) the Court is satisfied that
 - (i) an order has been made under section 35(2) extending the designation concerned; and
 - (ii) that order was made on a ground stated in section 37(b) or (c) or (d); and
 - (b) the Court considers it appropriate that the specified property not remain subject to the prohibition in section 9, but instead be forfeited to the Crown.
- (3) In considering whether to make an order under this section in respect of particular property, the Court may have regard to
- (a) any undue hardship that is reasonably likely to be caused to any person by the operation of such an order:
 - (b) the nature and extent of the entity's interest in the property, and the nature and extent of other interests in it (if any).

Compare: 1991 No 120 s15(2)(b), (c)

56. *Notice of application under section 55*

- (1) The Attorney-General is required to name as a respondent to an application under section 55 only those persons who are known to the Attorney-General to have an interest in the property that is the subject of the application.
- (2) The Attorney-General must serve notice of an application under section 55 (in any manner, and within any time, the High Court may direct) on any person
 - (a) who there is reason to believe may have an interest in the property; and
 - (b) that the High Court directs.
- (3) Any person who claims an interest in the property is entitled to appear and to adduce evidence at the hearing of the application.
- (4) Subsection (3) is subject to section 38.

57. *Further provisions relating to orders under section 55*

The following sections of the Proceeds of Crime Act 1991 apply, with the following (and all other necessary) modifications, to the making, effect, operation, and discharge of an order under section 55, as if the order were a forfeiture order under section 15(I) of that Act:

(a) section 15(3)(a) and (4) to (7) (which relate to the terms of the order and to any directions that are necessary and convenient for giving effect to it, including the issue of warrants authorizing officers of Court to enter and search any place or thing and to seize any document required to effect the transfer of the property):

(b) section 16 (which relates to the effect of the order, except that the reference in subsection (4)(b) to the Minister must be read as a reference to the Attorney-General, and references in subsections (5) and (6) to the making of a forfeiture order or the entering of a person's conviction must be read as references to the making of an order under section 55 and to the making of an order under section 35(2):

(c) section 54 (which relates to the Official Assignee discharging the order, except that

(i) the reference to a restraining order must be read as a reference to a direction under section 48:

(ii) the direction to discharge must be given by the Attorney-General, not by the Minister:

(iii) in determining the relevant appeal period referred to in section 16 of that Act, references in section 16(5) and (6) of that Act to the making of a forfeiture order or the entering of a person's conviction must be read as references to the making of an order under section 55 and to the making of an order under section 35(2):

(iv) the reference to sections 17 to 23 of that Act must be read as a reference to sections 52 to 61 of this Act).

58. Appeal against decision on application under section 55

(1) A party to an application under section 55 may appeal to the Court of Appeal against the decision of the High Court.

(2) Subject to sections 38 to 40, the procedure for the appeal must be in accordance with rules of Court.

59. Discharge of order under section 55 on appeal or by quashing of related order under section 35(2)

(1) If the High Court makes an order under section 55 against property in respect of an entity the subject of an order under section 35(2), and the order under section 35(2) is later quashed on appeal, the quashing of that order operates to discharge the order under section 55.

(2) The revocation, under section 34, of a designation that has been extended by an order made under section 35(2), does not discharge any

order made under section 55 against property of the entity who was the subject of the designation.

(3) If an order under section 55 in respect of any property is discharged as provided in subsection (1) or by a Court hearing an appeal, under section 58, against the making of the order, the Attorney-General must,

(a) as soon as practicable after the discharge of the order, serve notice of the discharge of the order under section 55 (in any manner, and within any time, the Court may direct) on any person who the Attorney-General has reason to believe may have had an interest in the property immediately before the making of the order; and

(b) if required to do so by a Court, serve notice of the discharge of the order under section 55 (in any manner, and within any time, the Court may direct) on such persons as the Court may specify.

(4) Every notice under subsection (3) must include a statement that a person claiming an interest in the property may apply under subsection (5) for the transfer of the interest to that person.

(5) If an order under section 55 is discharged in either of the ways referred to in subsection (3), any person claiming an interest in the property immediately before the making of the order may apply to the Attorney-General, in writing, for the transfer of the interest to that person.

(6) If the Attorney-General is satisfied that any claim made under subsection (5) in respect of any interest in property is valid, the Attorney-General must,

(a) if the interest is still vested in the Crown, arrange for the interest to be transferred to the claimant; or

(b) in any other case, and subject to section 60, arrange for payment to the claimant of an amount equal to the value of the interest.

Compare: 1991 No 120 s19

60. Attorney-general may apply for directions

(1) In any case where there is any question as to the validity of any claim made under section 59(5),

(a) the Attorney-General may apply to the High Court for directions concerning the claim; and

(b) the Court may give any directions in the matter it thinks just.

(2) If an application is made under subsection (1),

(a) the Attorney-General must serve notice of the application (in any manner, and within any time, the Court may direct) on every person that the Attorney-General has reason to believe may have an interest in the application:

(b) the Court may, at any time before the final determination of the application, direct the Attorney-General to serve notice of the application (in any manner, and within any time, the Court may direct) on such persons as the Court may specify:

(c) every person who claims an interest in the application is entitled to appear and to adduce evidence at the hearing of the application.

Compare: 1991 No 120 s20

61. Double benefit not permitted

If, on an application made under section 52(3) in respect of any interest in any property, the Court has made an order under section 54(2)(c) declaring that there is payable by the Crown to the applicant an amount equal to the value of the interest declared by the Court, an amount equal to the amount so declared must be deducted from any amount required to be paid, under section 59(6)(b), to that applicant in respect of that interest.

Compare: 1991 No 120 s21

Part 3 - Miscellaneous provisions

Evidence that States are, or are not, parties to conventions

62. Certificates as to States Parties under conventions

A certificate that appears to be signed by, or on behalf of, the Secretary of Foreign Affairs and Trade, and that states that a State is, or is not, a State Party under the Bombings Convention or, as the case requires, under the Financing Convention, is sufficient evidence of that matter unless the contrary is proved (for example, by the production of another certificate issued after the first certificate).

Investigation and prosecution of offences against act or referred to in conventions

63. Application of sections 64 and 65

(1) Sections 64 and 65 apply whenever the Attorney-General receives information that there may be present in New Zealand a person who has

committed, or is alleged to have committed, an offence referred to in article 2 of the Bombings Convention or, as the case requires, article 2 of the Financing Convention.

(2) In sections 64 and 65, relevant States Parties means

(a) any States Parties that have established jurisdiction in accordance with article 6(1) or (2) of the Bombings Convention or, as the case requires, article 7(1) or (2) of the Financing Convention; and

(b) any other interested States Parties the Attorney-General considers it advisable to inform or notify.

64. Attorney-general to indicate to relevant States Parties whether New Zealand to exercise jurisdiction

When an investigation has been undertaken under New Zealand law of the facts contained in the information (being the investigation contemplated by article 7(1) of the Bombings Convention or, as the case requires, article 9(1) of the Financing Convention), the Attorney-General must

(a) inform the relevant States Parties promptly of the findings of the investigation; and

(b) indicate promptly to the relevant States Parties whether New Zealand intends to exercise jurisdiction.

65. Attorney-General to notify relevant States Parties if person taken into custody

If the measures taken under New Zealand law to ensure the person's presence for the purpose of prosecution or extradition (being the measures contemplated by article 7 of the Bombings Convention or, as the case requires, article 9 of the Financing Convention) include taking the person into custody, the Attorney-General must, immediately after the person is taken into custody, notify the relevant States Parties, either directly or through the Secretary-General of the United Nations, of

(a) the fact that the person is in custody; and

(b) the circumstances that justify the person's detention.

66. Rights of certain persons taken into custody to communicate with consular representative, etc.

(1) This section applies to a person who is taken into custody in New Zealand as part of the measures referred to in section 65 and who is neither

- (a) a New Zealand citizen; nor
 - (b) a person who is ordinarily resident in New Zealand but is not a citizen of any State.
- (2) Promptly after being taken into custody, a person to whom this section applies must be informed that he or she is entitled, and must be permitted,
- (a) to communicate without delay with the nearest appropriate representative of the relevant State; and
 - (b) to be visited by a representative of the relevant State.
- (3) In subsection (2), relevant State, in relation to a person, means
- (a) the State of which the person is a citizen; or
 - (b) the State that is otherwise entitled to protect the person's rights; or
 - (c) if the person is not a citizen of any State, the State in whose territory the person ordinarily resides.
- (4) Nothing in this section affects any other rights of a person to whom this section applies.

67. Attorney-General's consent to prosecutions required

- (1) No proceedings for any offence against this Act may be instituted in any court except with the consent of the Attorney-General.
- (2) However, a person alleged to have committed any offence against this Act may be arrested, or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General's consent under subsection (1) has not been obtained.
- (3) Despite subsections (1) and (2), nothing in this section applies in respect of an offence against section 43 or section 47.

68. Attorney-General to communicate outcome of prosecution

If a person is prosecuted for terrorist bombing or financing of terrorism, the Attorney-General must communicate the final outcome of the proceedings promptly to the Secretary-General of the United Nations, so that he or she may transmit the information to other States Parties to the Bombings Convention or, as the case requires, the Financing Convention.

Extradition

69. Offences 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, terrorist bombing and financing of terrorism are each, if not already described in the treaty, deemed to be an offence described in any extradition treaty concluded before the relevant date and for the time being in force between New Zealand and any country that is a party to the Bombings Convention or (as the case requires) the Financing Convention, or to which the Bombings Convention or (as the case requires) the Financing Convention extends.

(2) If under subsection (1) an offence is deemed to be an offence described in an extradition treaty, no person may be surrendered for the offence in accordance with the Extradition Act 1999 if the conduct alleged to constitute the offence occurred before the relevant date.

(3) Subsection (2) does not prevent the person from being surrendered for an offence (other than terrorist bombing or financing of terrorism) described in the extradition treaty and constituted by conduct that also constitutes or may constitute terrorist bombing or financing of terrorism.

(4) In this section, relevant date, in relation to terrorist bombing or financing of terrorism, means the date on which this section comes into force.

Review of provisions to implement Anti-terrorism Resolution

70. Review of operation of certain provisions of this Act

(1) This section applies to the provisions of this Act that are to implement New Zealand's obligations under the Anti-terrorism Resolution (the provisions).

(2) The House of Representatives must, as soon as practicable after 1 December 2004, refer to a select committee for consideration the following matters:

(a) the operation of the provisions since the date of the commencement of this section:

(b) whether the provisions should be retained or repealed:

(c) if they should be retained, whether any amendments to this Act (for example, amendments making provision for compensation) are necessary or desirable.

(3) The select committee to which those matters are referred must report its view on them to the House of Representatives before 1 December 2005.

Compare: 1993 No 87 s264

Relationship with other enactments

71. Proceeds of Crime Act 1991 not affected

Nothing in this Act affects the Proceeds of Crime Act 1991.

72. United Nations Act 1946 not affected

(1) Nothing in section 9 or section 10 or section 12 or section 13, or in any other provision of this Act giving effect to the Anti-terrorism Resolution, affects the United Nations Act 1946 or any regulations made under it.

(2) Without limiting the generality of subsection (1), regulations may be made under section 2 of the United Nations Act 1946 for the purpose of giving effect to the Anti-terrorism Resolution, or to other decisions of or on behalf of the Security Council of the United Nations that recall or reaffirm and are to give further or better effect to, the Anti-terrorism Resolution.

Regulations

73. Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing the forms of notices, reports, or other documents required under, or contemplated by, this Act, and requiring the use of the forms prescribed:

(b) prescribing methods for the giving or publication or service of notices, reports, or other documents required by this Act to be given or published or served:

(c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Revocations and saving and transitional provision

74. *Revocations*

(1) The United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 (SR 2001/351) are revoked.

(2) Regulation 20A of the United Nations Sanctions (Afghanistan) Regulations 2001 (SR 2001/26) is consequentially revoked.

75. *Saving and transitional provision relating to specified entities*

(1) This section applies to the entities that, immediately before the commencement of this section, were specified entities for the purposes of the United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001.

(2) Each of the entities must for the purposes of this Act be treated as if it were an entity that has been designated as a terrorist entity under section 22, and therefore is the subject of a designation as a terrorist entity under section 22.

(3) The designations referred to in subsection (2) must be treated as having been in every respect validly made and notified, and as having taken effect on the commencement of this section, but may be revoked by the Prime Minister under section 34(1).

76. *Amendment to Extradition Act 1999*

Section 101A(2) of the Extradition Act 1999 is amended by adding the following paragraph:

“(ga) section 69 of the Terrorism Suppression Act 2002.”

Amendment to Financial Transactions Reporting Act 1996

77. *Amendment to Financial Transactions Reporting Act 1996*

Section 15(1) of the Financial Transactions Reporting Act 1996 is amended by inserting, after the words “section 19 of this Act”, the words “and to section 44(4) of the Terrorism Suppression Act 2002”.

Amendment to Immigration Act 1987

78. *Amendment to Immigration Act 1987*

Section 2(1) of the Immigration Act 1987 is amended by inserting in paragraph (d) of the definition of act of terrorism, after the expression “1980”, the expression “or the Maritime Crimes Act 1999 or against section 7(1) or section 8(1) of the Terrorism Suppression Act 2002”.

Amendments to Mutual Assistance in Criminal Matters Act 1992

79. Schedule amended to refer to Bombings Convention

The Schedule of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, in its appropriate numerical order, the following row:

23 The International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations at New York on 15 December 1997	An offence against the following section of the Terrorism Suppression Act 2002: <i>section</i> <i>subject matter</i> 7(1) terrorist bombing
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80. Schedule amended to refer to Financing Convention

The Schedule of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, in its appropriate numerical order, the following row:

24 The International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations at New York on 9 December 1999	An offence— (a) against the following section of the Terrorism Suppression Act 2002: <i>section</i> <i>subject matter</i> 8(1) financing of terrorism; and (b) that involves a terrorist act of a kind referred to in section 5(1)(b) or (c) of that Act Amendment to Proceeds of Crime Act 1991
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81. Amendment to Proceeds of Crime Act 1991

Section 2(1) of the Proceeds of Crime Act 1991 is amended by repealing the definition of tainted property, and substituting the following definition:

“tainted property

“(a) in relation to a serious offence, means

“(i) property used to commit, or to facilitate the commission of, the offence; or

“(ii) proceeds of the offence; and

“(b) when used without reference to a particular offence, means tainted property in relation to any serious offence; and

“(c) in relation to a serious offence that is an offence against section

8(1) of the Terrorism Suppression Act 2002, includes funds (as defined in section 4(1) of that Act) allocated for the purpose of committing that serious offence; and

“(d) in relation to a foreign serious offence that, if committed within the jurisdiction of New Zealand, would correspond to an offence against section 8(1) of the Terrorism Suppression Act 2002, includes funds (as so defined) allocated for the purpose of committing that foreign serious offence”.

3. TERRORISM SUPPRESSION AMENDMENT ACT 2003

Public Act : 2003 No 106

Date of assent: 30 October 2003

Commencement : see section 2

The Parliament of New Zealand enacts as follows:

1. Title

- (1) This Act is the Terrorism Suppression Amendment Act 2003.
- (2) In this Act, the Terrorism Suppression Act 2002 is called "the principal Act".

2. Commencement

- (1) Sections 3 to 18 and the Schedule come into force on a date to be appointed by the Governor-General by Order in Council; and
 - (a) one or more Orders in Council may appoint different dates for different provisions; and
 - (b) in the case of a provision inserting or substituting 2 or more provisions in an Act other than this Act, one or more Orders in Council may appoint different dates for different provisions inserted or substituted.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3. Purpose of this Act

Section 3(b) of the principal Act is amended by adding the following subparagraphs:

- "(iv) the Nuclear Material Convention; and
- "(v) the Plastic Explosives Convention."

4 . Interpretation

(1) Section 4 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

"*duly authorised military device*" means an explosive article, including, but not restricted to, a shell, bomb, projectile, mine, missile, rocket, shaped charge, grenade, and perforator, manufactured exclusively for lawful military or police purposes and approved for those purposes by the Environmental Risk Management Authority

"*manufacture*" means any process, including reprocessing, that produces plastic explosives

"*nuclear material*" has the same meaning as in Article 1(a) of the Nuclear Material Convention

"*Nuclear Material Convention*" means the Convention on the Physical Protection of Nuclear Material, done at New York and Vienna on 3 March 1980, a copy of the English text of which is set out in Schedule 2A

"*nuclear material offence*" means an offence against section 13C

"*plastic explosives*" means explosive products, including explosives in flexible or elastic sheet form, formulated with 1 or more high explosives that, in their pure form, have a vapour pressure less than 10⁻⁴ Pa at a temperature of 25°C; and are formulated with a binder material and are, as a mixture, malleable or flexible at room temperature

"*Plastic Explosives Convention*" means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991, a copy of the English text of which is set out in Schedule 2B

"*radioactive material*" has the same meaning as in section 2(1) of the Radiation Protection Act 1965

"*unmarked*", in relation to a plastic explosive, means that has not had introduced into it at manufacture, in accordance with the technical annex to the Plastic Explosives Convention, a detection agent listed in Part 2 of that annex."

(2) Section 4 of the principal Act is amended by adding the following subsection:

"(3) Terms and expressions used and not defined in this Act but defined in the Nuclear Material Convention, the Plastic Explosives Convention, or the Technical Annex to the Plastic Explosives Convention have the same meaning as in those Conventions and Annex, unless the context otherwise requires."

5. New headings and sections 13A and 13D inserted

The principal Act is amended by inserting, after section 13, the following headings and sections:

"Harbouring or concealing terrorists

"13A Harbouring or concealing terrorists

"(1) A person commits an offence who, with the intention of assisting another person to avoid arrest, escape lawful custody, or avoid conviction, harbours or conceals that person,--

"(a) knowing, or being reckless as to whether, that person intends to carry out a terrorist act; or

"(b) knowing, or being reckless as to whether, that person has carried out a terrorist act.

"(2) A person who commits an offence against subsection (1) is liable on conviction on indictment to a term of imprisonment not exceeding 7 years.

"Offences relating to plastic explosives and nuclear materials

"13B Offences involving use and movement of unmarked plastic explosives

"(1) A person commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 10 years or a fine not exceeding \$500,000, or both, who--

"(a) possesses, uses, or manufactures unmarked plastic explosives, knowing they are unmarked; or

"(b) imports or exports unmarked plastic explosives to or from New Zealand, knowing they are unmarked.

"(2) Subsection (1) does not apply in respect of unmarked plastic explosives (not being explosives to which subsection (3) applies) that were lawfully manufactured in, or imported into New Zealand before the

commencement of this section and that may, subject to the Hazardous Substances and New Organisms Act 1996, be transported or possessed by–

"(a) a person who performs military or police functions during the period that begins with the entry into force of this section and ends 15 years later; or

"(b) any other person during the period that begins with the entry into force of this section and ends 3 years later:

"(3) Nothing in this section applies to unmarked plastic explosives–

"(a) that are manufactured or held in limited quantities for sole use in any of the following activities that are duly approved by the Environmental Risk Management Authority:

"(i) research, development, or testing of new or modified explosives; or

"(ii) training in explosives detection or testing of explosives detection equipment; or

"(iii) forensic science activities; or

"(b) that are destined to be, and are incorporated as, an integral part of a duly authorised military device in New Zealand within 3 years after the date on which this section comes into force.

"13C Offences involving physical protection of nuclear material

"(1) A person commits an offence who,–

"(a) without lawful authority, receives, possesses, uses, transfers, alters, disposes of, or disperses nuclear material, knowing it is nuclear material, and–

"(i) that causes death, injury, or disease to any person or substantial damage to property; or

"(ii) with intent to cause, or being reckless as to whether it causes death, injury, or disease to any person or substantial damage to property; or

"(b) commits theft, as defined in section 219 of the Crimes Act 1961, of nuclear material knowing that it was nuclear material; or

"(c) fraudulently obtains nuclear material, knowing that it was nuclear material; or

"(d) makes a demand for nuclear material by threat, or by use of force, or by any other form of intimidation with intent to steal it; or

"(e) with intent to intimidate, threatens to use nuclear material to cause—

"(i) death, injury, or disease to any person; or

"(ii) substantial damage to any property; or "

"(f) with intent to compel any person, international organisation, or State to do, or refrain from doing, any act, threatens to steal nuclear material.

"(2) A person who commits an offence against subsection (1) is liable on conviction on indictment to imprisonment for a term not exceeding 10 years, or a fine not exceeding \$500,000, or both.

"Importation, acquisition, possession, or control of radioactive material

"13D Importation, acquisition, etc, of radioactive material

A person commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 10 years who imports, acquires, possesses, or has control over any radioactive material with intent to use it to commit an offence involving bodily injury, or the threat of violence, to any person."

6. Offences also apply in certain cases outside New Zealand

Section 14(1) of the principal Act is amended by inserting, after the words "sections 7 to 13", the words "and 13B to 13D".

7. New section 18 substituted

The principal Act is amended by repealing section 18, and substituting the following section:

"18 Offences also apply to acts outside New Zealand if alleged offender is in New Zealand and is not extradited

Even if the acts alleged to constitute the offence occurred wholly outside New Zealand, proceedings *may* be brought for terrorist bombing, financing of terrorism, or a nuclear material offence if the person to be charged has been found in New Zealand and has not been extradited."

8. *New section 29A inserted*

The principal Act is amended by inserting, after section 29, the following section:

"29A Changes of description of designated entities

"(1) If satisfied that an entity designated under section 22 should have a description other than that under which the entity was designated (or than the description stated in the most recent notice under this subsection relating to the entity), the Prime Minister may, by signing a written notice to that effect, state a new description for the entity.

"(2) The notice must identify the entity by reference to

"(a) its most recent description; and

"(b) the notice in the *Gazette* in which that description was stated.

"(3) Sections 23(e) and 23(f) apply to the notice as if it were a designation under section 22; and section 28(2) applies accordingly.

"(4) The stating of the new description does not affect the designation of the entity and (in particular) does not affect the application of section 35(1) to it."

9. *New heading and sections 47A to 47G inserted*

(1) The principal Act is amended by inserting, after section 47, the following heading and sections:

"Customs' powers in relation to certain property

"47A Detention of goods suspected to be terrorist property"

"(1) A Customs officer or authorised person may, without warrant, seize and detain goods if—

"(a) the goods came to his or her attention, or into his or her possession, during a search, inspection, audit, or examination under—

"(i) the Customs and Excise Act 1996; or

"(ii) Part V of the Financial Transactions Reporting Act 1996 (which relates to reporting of imports and exports of cash); and

"(b) the goods are in New Zealand and he or she is satisfied that they either–

"(i) are being, or are intended to be, exported from New Zealand; or

"(ii) are being, or have been, imported into New Zealand; and

"(c) he or she has good cause to suspect

"(i) that the goods are property of any kind owned or controlled, directly or indirectly, by an entity; and "(ii) that the entity is an entity designated under section 20 or section 22 of this Act as a terrorist or associated entity; or

"(d) he or she has good cause to suspect-

"(i) that the goods are cash or cash equivalents owned or controlled, directly or indirectly, by an entity; and

"(ii) that the entity is an entity eligible for designation under section 20 or section 22 of this Act as a terrorist or associated entity.

"(2) In this section and sections 47B to 47G,–

"authorised person, Chief Executive, the Customs, Customs officer or officer, exportation, goods, and importation have the meanings given to them in section 2(1) of the Customs and Excise Act 1996

"cash equivalents includes (without limitation) bearer bonds, gemstones, money orders, postal notes, precious metals, and travellers cheques.

"47B Return of cash necessary to satisfy essential human needs

"(1) The power to detain goods under section 47A does not extend to, and the Customs must if practicable return immediately, cash seized under section 47A if the Customs is satisfied that the cash is (or that things for which it might be exchanged are) necessary to satisfy the essential human needs–

"(a) of (or of a dependant of) an individual from whom the cash has been seized; and

"(b) arising on, or within 7 days after, the date on which the detention would otherwise be effected.

"(2) Nothing in subsection (1) requires the Customs to return any cash that the Customs is satisfied is not necessary for the purpose specified in that subsection.

"(3) If the 7-day period referred to in section 47D(1)(a) is extended under section 47E, subsection (1) applies to the extension, and the reference in subsection (1)(b) to 7 days must be read as a reference to the number of days (not exceeding 21) of that 7-day period as extended.

"47C Further provisions about detention under section 47A

"(1) Reasonable force may be used if it is necessary for any of the following purposes:

"(a) to seize goods under section 47A:

"(b) to detain goods under section 47A.

"(2) If the person from whom goods have been seized and detained under section 47A is identified but is not present when the seizure and detention occurs (for example, because the goods concerned are in mail or cargo or in unaccompanied baggage), the Customs must make all reasonable efforts to notify that person of the detention and seizure as soon as practicable.

"(3) Goods detained under section 47A must be taken to such place of security as a Customs officer or authorised person directs, and there detained, unless section 47F applies.

"(4) Section 175 of the Customs and Excise Act 1996 (which protects persons acting under authority of that Act) applies, with all necessary modifications, in relation to the exercise of a power under any of sections 47A to 47F of this Act.

"(5) Nothing in section 47A limits or affects powers under the following Acts:

"(a) Customs and Excise Act 1996:

"(b) Financial Transactions Reporting Act 1996:

"(c) Mutual Assistance in Criminal Matters Act 1992:

"(d) Proceeds of Crime Act 1991.

"47D *Return of goods detained under section 47A*

"(1) In this section, *investigation period*, in relation to goods seized and detained under section 47A,–

"(a) means the period of 7 days after the date on which the goods were seized and detained; and

"(b) includes any extension of that period granted by the High Court under section 47E.

"(2) Goods seized and detained under section 47A must be returned to the person from whom they were seized as soon as practicable after whichever of the following occurs first:

"(a) the completion of all relevant investigations, if they show either–

"(i) that the goods are not property of the kind referred to in section 47A(1)(c)(i) or (d)(i); or

"(ii) that the entity is not an entity of the kind referred to in section 47A(1)(c)(ii) or (d)(ii):

"(b) the expiry of the investigation period.

"(3) However, the Customs need not return the goods as provided in subsection (2), and may continue to detain them pending a direction by the Prime Minister under section 48 that the Official Assignee take custody and control of them, if the Customs is advised by, or on behalf of, the Prime Minister

"(a) that the goods are property of any kind owned or controlled, directly or indirectly, by an entity; and

"(b) that the entity is an entity designated under section 20 or section 22 as a terrorist or associated entity.

"47E *Extension of 7-day period in section 47D(1)(a)*

"(1) The 7-day period in section 47D(1)(a) may be extended (once only) by order of the High Court for a reasonable period up to a further 14 days if, on an application for the purpose made before the expiry of that 7-day period, that Court is satisfied

"(a) that the good cause to suspect required by section 47A(1)(c) or (d) exists; and

"(b) that the extension to be granted is necessary to enable investigations in or outside New Zealand in relation to the goods or entity to be completed.

"(2) The application must be made in writing and served on the person from whom the goods were seized (if that person can be identified and located), and must include the following particulars:

"(a) a description of the goods detained:

"(b) the date on which the detention commenced:

"(c) a statement of the facts supporting the good cause to suspect required by section 47A(1)(c) or (d); and

"(d) a statement of reasons why the extension sought is necessary to enable investigations in or outside New Zealand in relation to the goods or entity to be completed.

"(3) The person from whom the goods were seized is entitled to appear and be heard on the application.

"(4) The Customs must make all reasonable efforts to notify the person from whom the goods were seized, at least 24 hours before the hearing of the application, of the time and place of that hearing.

47F *Custody of certain goods detained under section 47A*

"(1) If goods detained under section 47A are a craft, vehicle, or animal, a Customs officer may leave those goods in the custody of either–

"(a) the person from whom the goods have been seized; or

"(b) any other person authorised by the Customs officer and who consents to having such custody.

"(2) Every person who has the custody of goods under subsection (1) must, until a final decision is made under section 47D as to whether or not they are to be returned, hold them in safekeeping, without charge to the Crown and in accordance with any reasonable conditions that may be imposed by the Customs.

"(3) A person to whom subsection (2) applies must also–

"(a) make the goods available to a Customs officer on request; and

"(b) not alter, or dispose of, or remove the goods from New Zealand, unless he or she is authorised to do so by a Customs officer; and

"(c) return the goods on demand to the custody of the Customs.

Compare: 1996 No 27 s 226(7), (8)

"47G *Offences in relation to certain detained goods*

"(1) Every person commits an offence who, having custody of goods pursuant to section 47F(1), acts in breach of any requirement of, or imposed pursuant to, section 47F(2) or (3).

"(2) Every person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$5,000.

"(3) Every person commits an offence who, without the permission of the Chief Executive, takes or carries away or otherwise converts to his or her own use goods to which section 47F(2) and (3) applies.

"(4) Every person who commits an offence against subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding an amount equal to 3 times the value of the goods to which the offence relates.

Compare: 1996 No 27 s 215".

(2) Sections 15 and 19 of the principal Act are consequentially amended by inserting, after the expression "section 47", the words "or section 47G".

10. Certificates as to States Parties under Conventions

Section 62 of the principal Act is amended by omitting the words "Bombings Convention or, as the case requires, under the Financing Convention", and substituting the words "Bombings Convention, the Financing Convention, the Nuclear Material Convention, or the Plastic Explosives Convention".

11. Application of sections 64 and 65

(1) Section 63(1) of the principal Act is amended by adding the words "or, as the case requires, article 7 of the Nuclear Material Convention".

(2) Section 63(2)(a) of the principal Act is amended by inserting, after the words "article 7(1) or (2) of the Financing Convention", the words "or, as the case requires, article 8 of the Nuclear Material Convention".

12. Attorney-General to indicate to relevant States Parties whether New Zealand to exercise jurisdiction

Section 64 of the principal Act is amended by inserting, after the words "article 9(1) of the Financing Convention", the words "or, as the case requires, article 9 of the Nuclear Material Convention".

13. Attorney-General to notify relevant States Parties if person taken into custody

Section 65 of the principal Act is amended by inserting, after the words "article 9 of the Financing Convention", the words "or, as the case requires, article 9 of the Nuclear Material Convention".

14. Attorney-General's consent to prosecutions required

Section 67(3) of the principal Act is amended by adding the words "or section 47G".

15. Offences deemed to be included in extradition treaties

(1) Section 69 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

"(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, terrorist bombing, financing of terrorism, and any nuclear material offence are each, if not already described in the treaty, deemed to be an offence described in any extradition treaty concluded before the relevant date and for the time being in force between New Zealand and any country that is a party to any of the following conventions, or to which any of the following conventions extends:

"(a) the Bombings Convention; or

"(b) the Financing Convention; or

"(c) the Nuclear Material Convention."

(2) Section 69 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

"(3) Subsection (2) does not prevent the person from being surrendered for an offence (other than terrorist bombing, financing of terrorism, or a nuclear material offence) described in the extradition treaty and constituted by conduct that also constitutes or may constitute terrorist bombing, financing of terrorism, or a nuclear material offence."

(3) Section 69 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

"(4) In this section, relevant date,—

"(a) in relation to terrorist bombing or financing of terrorism, means 5 December 2002; and

"(b) in relation to a nuclear material offence, the date on which this section enters into force in relation to that offence."

16. New Schedules 2A and 2B inserted

The principal Act is amended by inserting, after Schedule 2, the Schedules 2A and 2B set out in the Schedule.

17. Schedule 3 amended

Schedule 3 of the principal Act is amended by adding the following paragraph:

"(9) Convention on the Physical Protection of Nuclear Material, done at New York and Vienna, 3 March 1980."

Consequential amendment to Mutual Assistance in Criminal Matters Act 1992

18. Schedule amended to refer to Nuclear Material Convention

The Schedule of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, in its appropriate numerical order, the following row:

27. Convention on the Physical Protection of Nuclear Materials done at Vienna on 26 October 1979.	An offence against the following section of the Terrorism Suppression Act 2002:
	<i>section</i>
	<i>subject matter</i>
	13C
	offences involving the physical protection of nuclear materials

Schedule

New Schedule 2A and 2B inserted⁵¹

⁵¹ Schedule 2A, containing the text of the Convention on the Physical Protection of Nuclear Material (Vienna, 3 March 1980), and Schedule 2B, containing the text of the Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991), have been omitted from the present publication.