

# **Autonomous Sanctions Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill establishes a framework for the implementation of autonomous sanctions by New Zealand.

Autonomous sanctions are restrictive measures designed to influence the behaviour of a foreign individual, entity, or regime that is responsible for a situation of international concern. Sanctions can take a variety of forms. The aim of sanctions is to exert political and economic pressure to bring about change, as well as to limit the adverse consequences of the situation (for example, by limiting access to military goods or military training). The Bill will enable the Government to—

- designate individuals, entities, assets and services to be targeted by autonomous sanctions:
- impose prohibitions or restrictions in relation to designated individuals or entities, including travel bans and prohibitions on remaining in New Zealand, and prohibitions or restrictions on dealing with assets or services linked to those individuals or entities (including asset freezes):
- prohibit or restrict other kinds of specified dealings with designated assets and services (for example, trade embargoes):
- impose duties in relation to compliance with autonomous sanctions.

The Minister of Foreign Affairs must be satisfied, before recommending the making of regulations to impose an autonomous sanction, that the regulations will assist in maintaining or restoring peace and security in response to—

- a threat to peace and security in the Asia–Pacific region; or
- a breach of international peace and security in response to which the United Nations (UN) Security Council—

- has not acted under Article 41 of the Charter of the UN (whether because of the exercise of a veto by a permanent member of the Security Council or otherwise); or
- has acted under Article 41, but the action is insufficient to maintain or restore peace and security.

New Zealand currently has the ability to impose a limited range of sanctions and sanction-type measures in an ad hoc way within existing policy and legal frameworks. These include the refusal of entry visas, diplomatic sanctions (such as the expulsion of diplomats), the suspension of official visits, and the suspension of aid and co-operation.

The measures available to New Zealand under current policy settings are not seen, either here or by our close security partners, as being a sufficient response to situations of real concern in cases where human rights, fundamental freedoms, the rule of law, or democratic principles are being violated. Targeted economic and financial sanctions (known as “smart sanctions”) are considered to be among the most effective measures available, and are regarded as a critical element of an effective sanctions regime. Such measures allow restrictions to be applied in a way that targets the individuals, entities, assets, and services that are contributing most to a situation of concern, while minimising any deleterious effects on the wider population.

The Bill’s provisions may be used to supplement compulsory sanctions imposed by the UN Security Council acting under Chapter VII of the UN Charter, or may be applied independently of any action by the Security Council.

The Bill establishes a framework for the implementation of autonomous sanctions by regulation in clearly defined circumstances. Regulations will set out the specific prohibitions and restrictions that apply and the particular countries and descriptions of individuals, entities, assets, and services concerned. Individuals, entities, assets, or services that are subject to sanctions are able to be further identified by a designation notice published in the *Gazette* (as long as the further identification is consistent with the description in the regulations).

The framework is designed to provide the flexibility to tailor sanctions to different situations of concern and to enable the Government to take action in a timely way. It is also designed to provide certain protections to those who will be subject to sanctions and to innocent third parties who may be adversely affected by sanctions decisions. The Bill incorporates provisions to ensure that autonomous sanctions are transparent, able to be reviewed and revoked, temporary rather than permanent, and subject to exemptions where appropriate (for example, to meet humanitarian needs).

While existing processes and mechanisms are in place for the monitoring and enforcement of immigration restrictions and import and export restrictions, the Bill contains a requirement for banks and any other person specified by regulation to report to the Commissioner of Police when they suspect they are in possession of assets or providing services that are subject to a sanction. This will facilitate the monitoring and enforcement of any restrictions imposed under autonomous sanctions regulations. At

the same time, the Bill confers immunity from legal proceedings on any person who takes action in good faith in order to comply with the Bill or regulations made under the Bill.

Where designated individuals (other than New Zealand citizens or holders of a residence class visa) are already in New Zealand at the time of designation, the Bill allows the autonomous sanction regulations to prohibit them from remaining in New Zealand, and links to the deportation provisions of the Immigration Act 2009.

### **United Nations Act 1946**

The United Nations Act 1946 provides a parallel regulation-making power, enabling New Zealand to implement sanctions determined by the UN Security Council acting under the UN Charter. The penalties in the United Nations Act 1946 have not been updated since 1990 and are now ill-matched to the seriousness of breaching a sanction. The Bill amends the United Nations Act 1946 to align the penalty for breaching a UN sanction under that Act with the penalty for breaching an autonomous sanction as follows:

- in the case of an individual, imprisonment for a maximum of 5 years or a fine not exceeding \$100,000, or both; and
- in the case of a body corporate, a maximum fine of \$1 million.

The Bill also amends the United Nations Act 1946 to replicate the monitoring and enforcement provisions relating to autonomous sanctions such as the duty to report suspicious assets and services. This will ensure that the UN sanctions and autonomous sanctions regimes are well harmonised.

The Bill is an omnibus Bill introduced in accordance with Standing Order 263(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

### **Departmental disclosure statement**

The Ministry of Foreign Affairs and Trade is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2017&no=259>

### **Regulatory impact statement**

The Ministry of Foreign Affairs and Trade produced a regulatory impact statement on 15 October 2012 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://mfat.govt.nz/en/peace-rights-and-security/sanctions/>

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

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* states when the Bill is to come into force, which is on the day after it receives the Royal assent.

## Part 1

### Autonomous sanctions

*Clause 3* sets out the purpose of the Bill. The purpose is to enable the New Zealand Government to impose and enforce sanctions autonomously (rather than together with other members of the United Nations under the United Nations Act 1946). The aim of autonomous sanctions is to assist in maintaining or restoring peace and security in response to threats to or breaches of peace and security. The threats or breaches concerned are described in *clause 8*.

Autonomous sanction is defined in *clause 6*. The term denotes a prohibition or restriction imposed by regulations made under the Bill. Autonomous sanctions can be prohibitions or restrictions on—

- designated persons travelling to, entering, or remaining in New Zealand; or
- dealing with assets; or
- dealing with services.

*Clause 4* sets out the application of the Bill. The Bill empowers regulations that may apply in relation to persons travelling to, entering, or remaining in New Zealand and in relation to dealing with assets or services (including dealings outside New Zealand by New Zealand citizens, residents, and entities, and dealings on New Zealand ships or aircraft). Extraterritorial jurisdiction for offences is more particularly dealt with in *clause 24*.

*Clause 5* contains definitions of terms used in the Bill. The key terms are asset, service, dealing with assets, and dealing with services.

Asset and service are defined widely. The essence of the definition of asset is that it is everything that is capable of being owned. Service means a service of any kind, with some inclusions that do not limit that basic definition. The definition also includes a service that facilitates, or is provided in relation to, any activity. Examples of services include advice, assistance, and training; bunkering services; carriage services; financial, accounting, and insurance services; and military activities.

Dealing with assets and dealing with services are also defined widely. Dealing with assets means using, receiving, providing, or otherwise dealing with assets in any way and by any means (whether commercially or not). Dealing with services means using, receiving, providing, or otherwise dealing with services in any way and by any means

(whether commercially or not). Both definitions indicate inclusions that do not limit the basic definition.

*Clause 7* provides that the Bill is to bind the Crown.

### *Regulations and designation notices*

*Clause 8* sets out the threshold for when the Minister may make a recommendation for regulations to be made under the Bill. The Minister may make a recommendation only if the Minister is satisfied that the regulations will assist in maintaining or restoring peace and security in response to—

- a threat to peace and security in the Asia-Pacific region; or
- a breach of international peace and security in response to which the United Nations Security Council—
  - has not acted under article 41 of the Charter of the United Nations (whether because of the exercise of a veto by a permanent member of the Security Council or otherwise); or
  - has acted under article 41, but the action is insufficient to maintain or restore peace and security.

*Clause 9* empowers regulations that may prescribe an autonomous sanction. Regulations that prescribe an autonomous sanction must—

- include a statement of the purpose of the regulations, including a description of the particular threat to or breach of peace and security that meets the criteria in *clause 8* to which the autonomous sanction responds:
- describe any designated persons, assets, or services:
- describe the prohibitions or restrictions of the autonomous sanction:
- describe any duties or requirements in relation to compliance with the autonomous sanction.

Other limits on the power to make regulations that prescribe an autonomous sanction are provided in *clauses 9 and 10* as follows:

- regulations prohibiting or restricting a designated person from travelling to or entering New Zealand do not affect New Zealand citizens and residents. The result is that New Zealand citizens and residents cannot be banned from coming into New Zealand. In relation to citizens, this is consistent with the protection in section 18 of the New Zealand Bill of Rights Act 1990. *Clause 10(2)* sets out the relationship of such a regulation with the Immigration Act 2009:
- regulations prohibiting a designated person from remaining in New Zealand do not affect New Zealand citizens and residents. New Zealand citizens and residents are not able to be removed from New Zealand (which is consistent with the protection in section 18 of the New Zealand Bill of Rights Act 1990). Designated persons who are not New Zealand citizens or residents may be liable for deportation under section 157 of the Immigration Act 2009 because the designation is sufficient reason for deportation:

- *clause 10* sets out other aspects of the scope and effects of autonomous sanctions regulations. *Clause 10(1)* allows the regulations to be of general application or to relate only to specified geographical areas. *Clause 10(4)* allows autonomous sanctions relating to dealing with assets or dealing with services to apply or disapply (with or without modifications), extend, exempt, or suspend any specified rule in any other enactment.

*Clause 11* enables the Minister to identify persons, assets, or services described in autonomous sanctions regulations. This may be done by a designation notice published in the *Gazette*. Designation notices must identify the persons, assets, or services consistently with the descriptions in the regulations, and must be required for the purpose of the regulations.

Another limitation on regulations that prescribe an autonomous sanction is that they must have a fixed term of no more than 3 years (*see clause 12*). (However, the term may be extended if the autonomous sanctions regulations are still required for the purpose of the regulations.)

#### *Applications for revocation, amendment, or exemption*

*Clause 13* provides the ability to challenge or alleviate the effects of an autonomous sanction. Those affected by an autonomous sanction are able to apply for the autonomous sanction to be amended or revoked. *Clause 13* also allows those affected to seek an exemption for a specified and individual situation, in relation to particular persons, assets, or services and for particular events or dealings. An application for the amendment or revocation of, or exemption from, an autonomous sanction may be made because of humanitarian need or for any other reason.

#### *Autonomous sanctions register*

*Clause 14* sets out the requirement on the Secretary of Foreign Affairs and Trade to maintain an online register listing all current autonomous sanctions and exemptions from autonomous sanctions.

#### *Duty to report suspicions*

*Clause 15* requires registered banks in possession or in immediate control of assets that they suspect are designated assets or assets owned or controlled (directly or indirectly) by a designated person to report that suspicion to the Commissioner of Police. The same obligation to report suspicions falls on registered banks that are to provide or that are providing services that they suspect are designated services or services provided (directly or indirectly) to a designated person.

Regulations made under *clause 26* may extend this obligation onto other persons who are not registered banks, but who are declared to be duty holders for the purposes of the Bill.

#### *Protection for persons with obligation or duty imposed by or under this Act*

*Clause 16* protects the identity of people making reports under *clause 15*.

*Clause 17* provides an immunity for people with obligations imposed by or under the Bill from liability in criminal and civil proceedings for any act or omission to comply with the obligations if the act or omission was reasonable and done in good faith.

### *Enforcement*

*Clauses 18 to 21* create a civil liability regime for people who breach or fail to comply with an autonomous sanction (without lawful justification or reasonable excuse). The regime also applies if there are reasonable grounds to believe that a person is likely to breach or fail to comply with an autonomous sanction.

The Attorney-General may issue a formal warning to a person to whom the regime applies or accept an enforceable undertaking from the person and then seek an order of the court if the undertaking is breached. Alternatively, the Attorney-General may seek an injunction restraining a person from breaching or failing to comply with an autonomous sanction.

*Clause 22* sets out offences under the Bill.

It is an offence to knowingly or recklessly breach or fail to comply with an autonomous sanction (without lawful justification or reasonable excuse) (*see clause 22(1)*).

It is also an offence to knowingly provide false information, or make material omissions, in connection with an application for the amendment or revocation of, or for an exemption from, an autonomous sanction (*see clause 22(3)*).

The offences under *clause 22(1) and (3)* are punishable, for individuals, by imprisonment for a term not exceeding 5 years or a fine not exceeding \$100,000 (or both) and, for entities, by a fine not exceeding \$1 million.

Knowingly failing to provide a report required under *clause 15* is an offence, as is knowingly providing false information or making material omissions in a report (*see clause 22(5)*). The punishment for individuals is a term of imprisonment not exceeding 1 year or a fine not exceeding \$20,000 (or both). The punishment for entities is a fine not exceeding \$200,000.

A person who knowingly breaches *clause 16(4)* commits an offence and is liable to a fine not exceeding \$10,000 (*see clause 22(7)*). *Clause 16(4)* prohibits a person from disclosing, in any judicial proceeding, information protected under *clause 16*, unless the decision-maker at the proceeding is satisfied that the disclosure is necessary in the interests of justice.

*Clause 22(8)* provides that if it is necessary to establish the state of mind of a body corporate in proceedings for an offence, it is sufficient to show that 1 individual working for the body corporate, acting within the scope of the person's actual or apparent authority, had that state of mind.

*Clause 23* provides that the provisions of the Customs and Excise Act 1996 that apply to prohibited imports or prohibited exports apply (with any necessary modifications) with respect to assets that are subject to, or that otherwise relate to, an autonomous sanction. The provisions apply as if the importation or exportation of the assets were prohibited under that Act.

*Clause 24* sets out the extraterritorial jurisdiction for offences under the Bill. This is modelled on the precedent section 7A of the Crimes Act 1961.

*Clause 25* provides that the Attorney-General must consent to any prosecution under the Bill. This is the usual position for foreign affairs legislation.

*Clause 26* provides for other regulation-making powers.

*Clause 27* makes a consequential amendment to the Privacy Act 1993 to make the register of autonomous sanctions required by *clause 14* a public register under that Act. This has the effect of applying the public register privacy principles set out in section 59 of that Act. Those principles govern the way in which personal information on public registers may be made available, among other things.

## Part 2

### Amendments to United Nations Act 1946

*Clause 28* provides that *Part 2* amends the United Nations Act 1946.

*Clause 29* amends section 3, which is concerned with criminal liability for a breach of regulations made under the United Nations Act 1946. The penalties are increased to reflect the seriousness of the offending in today's dollars. The penalties are the same as the penalties for breaching an autonomous sanction in *Part 1*—for individuals, imprisonment for a term not exceeding 5 years or a fine not exceeding \$100,000 (or both) and, for body corporates, a fine not exceeding \$1 million. *New section 3(1B) to (1D)* provide for new offences to address the provisions in the new *Schedule* inserted by *clause 30*. *New section 3(1E)* replicates *clause 22(8)* in *Part 1*, which is about proving a corporate's state of mind.

*Clause 30* inserts a new *Schedule* into the United Nations Act 1946. The *Schedule* will apply (in accordance with the amendment made in *clause 29(2)*) to regulations made under section 2 of the United Nations Act 1946. The *Schedule* replicates the following aspects of the autonomous sanctions regime in *Part 1*:

- the duty to report suspicions about breaches of sanctions:
- the protection of the identity of persons making such reports:
- an immunity for persons with obligations or duties imposed by or under the United Nations Act 1946:
- civil enforcement along the same lines as *clauses 18 to 21*.

All the changes to the United Nations Act 1946 are intended to make the 2 regimes parallel.

*Hon Gerry Brownlee*

# **Autonomous Sanctions Bill**

Government Bill

## **Contents**

	Page
1 Title	2
2 Commencement	2
<b>Part 1</b>	
<b>Autonomous sanctions</b>	
3 Purpose	3
4 Application	3
5 Interpretation	3
6 Meaning of autonomous sanction	5
7 Act binds the Crown	5
<i>Regulations and designation notices</i>	
8 Threshold for recommending autonomous sanction	5
9 Regulations	6
10 Scope and effect of regulations	6
11 Designation notice identifying persons, assets, or services described in regulations	7
12 Regulations and designation notices to have fixed term unless extended	7
<i>Applications for revocation, amendment, or exemption</i>	
13 Applications for revocation, amendment, or exemption	8
<i>Autonomous sanctions register</i>	
14 Autonomous sanctions register	9
<i>Duty to report suspicions</i>	
15 Duty to report suspicions	9

	<i>Protection for persons with obligation or duty imposed by or under this Act</i>	
16	Protection of identity of persons making reports	10
17	Protection for persons with obligation or duty imposed by or under this Act	11
	<i>Enforcement</i>	
18	Civil enforcement	11
19	Enforceable undertakings	12
20	Enforcement of undertakings	12
21	Injunctions	12
22	Offences	13
23	Application of Customs and Excise Act 1996	14
	<i>Extraterritorial application</i>	
24	Extraterritorial jurisdiction for offences	14
	<i>Attorney-General's consent</i>	
25	Attorney-General's consent required	15
	<i>Other regulation-making powers</i>	
26	Other regulation-making powers	15
	<i>Consequential amendment</i>	
27	Consequential amendment to Privacy Act 1993	16
	<b>Part 2</b>	
	<b>Amendments to United Nations Act 1946</b>	
28	Amendments to United Nations Act 1946	16
29	Section 3 amended (Liability for breach of regulations)	16
30	New Schedule inserted	17
	<b>Schedule</b>	18
	<b>New Schedule of United Nations Act 1946 inserted</b>	

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Autonomous Sanctions Act **2017**.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent. 5

## Part 1

### Autonomous sanctions

#### 3 Purpose

The purpose of this Act is to enable New Zealand to impose and enforce sanctions autonomously, so as to assist in maintaining or restoring peace and security in response to either a threat to peace and security in the Asia-Pacific region or a breach of international peace and security. 5

#### 4 Application

This Act empowers regulations that may apply in relation to—

- (a) persons travelling to, entering, or remaining in New Zealand; and 10
- (b) dealing with assets or dealing with services (including dealing outside New Zealand by New Zealand citizens, ordinary residents, and entities (*see section 24*)).

#### 5 Interpretation

In this Act, unless the context otherwise requires,— 15

**asset**—

- (a) means everything that is capable of being owned, whether it is—
  - (i) real or personal property; or
  - (ii) in tangible or intangible form; or
  - (iii) inside or outside New Zealand; and 20
- (b) includes—
  - (i) any legal or equitable estate or interest in property; and
  - (ii) the proceeds of any asset

**autonomous sanction** has the meaning given in **section 6**

**court** means the High Court 25

**dealing with assets**—

- (a) means using, receiving, providing, or otherwise dealing with assets in any way and by any means (whether commercially or not); and
- (b) includes, without limitation,—
  - (i) acquiring possession of, or a legal or an equitable interest in, assets: 30
  - (ii) transferring, carrying, supplying, procuring, paying for, buying, selling, importing, exporting, assigning, gifting, or disposing of assets:
  - (iii) allowing or facilitating dealing with assets 35

**dealing with services—**

- (a) means using, receiving, providing, or otherwise dealing with services in any way and by any means (whether commercially or not); and
- (b) includes, without limitation,—
  - (i) supplying, procuring, paying for, buying, selling, gifting, or transferring services: 5
  - (ii) allowing or facilitating dealing with services

**designated asset** means an asset to which an autonomous sanction applies because the asset is described in, or is within a class of assets described in, regulations made under **section 9** 10

**designated person** means a person to whom an autonomous sanction applies because the person is described in, or is within a class of persons described in, regulations made under **section 9**

**designated service** means a service to which an autonomous sanction applies because the service is described in, or is within a class of services described in, regulations made under **section 9** 15

**designation notice** means a notice given under **section 11**

**entity** means any of the following:

- (a) a company or other body corporate:
- (b) a corporation sole: 20
- (c) in relation to a trust,—
  - (i) if the trust has only 1 trustee, the trustee acting in the person's capacity as trustee:
  - (ii) if the trust has more than 1 trustee, the trustees acting jointly in their capacity as trustees: 25
- (d) an unincorporated body (including a partnership)

**holder of a residence class visa** has the same meaning as in section 4 of the Immigration Act 2009

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 30

**Ministry** means the Ministry of Foreign Affairs and Trade

**New Zealand citizen** has the same meaning as in section 4 of the Immigration Act 2009

**person** means— 35

- (a) an individual; or
- (b) an entity

**prescribed** means prescribed in regulations made under this Act

**Secretary** means the Secretary of Foreign Affairs and Trade  
**service**—

- (a) means a service of any kind, whether dealt with inside or outside New Zealand; and
- (b) includes, without limitation,—
  - (i) advice, assistance, or training: 5
  - (ii) a bunkering service:
  - (iii) a carriage service:
  - (iv) a financial, accounting, or insurance service:
  - (v) a military activity: 10
  - (vi) a service that facilitates, or is provided in relation to, any activity.

## 6 Meaning of autonomous sanction

In this Act, **autonomous sanction** means a prohibition or restriction imposed by regulations made under **section 9** on—

- (a) designated persons travelling to, entering, or remaining in New Zealand; 15  
or
- (b) dealing with assets; or
- (c) dealing with services.

## 7 Act binds the Crown

This Act binds the Crown. 20

### *Regulations and designation notices*

## 8 Threshold for recommending autonomous sanction

The Minister may make a recommendation for regulations to be made under **section 9** only if the Minister is satisfied that the regulations will assist in maintaining or restoring peace and security in response to— 25

- (a) a threat to peace and security in the Asia-Pacific region; or
- (b) a breach of international peace and security in response to which the United Nations Security Council—
  - (i) has not acted under article 41 of the Charter of the United Nations (whether because of the exercise of a veto by a permanent member of the Security Council or otherwise); or 30
  - (ii) has acted under article 41, but the action is insufficient to maintain or restore peace and security.

## 9 Regulations

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing an autonomous sanction, which must include—

- (a) a statement of the purpose of the regulations, including a description of the particular threat to or breach of peace and security that meets the criteria in **section 8** to which the autonomous sanction responds; and 5
- (b) a description of any—
  - (i) designated persons; and
  - (ii) designated assets; and 10
  - (iii) designated services; and
- (c) a description of the autonomous sanction's prohibitions or restrictions on or in relation to—
  - (i) designated persons, which may be,—
    - (A) in the case of individuals who are not New Zealand citizens or holders of a residence class visa, prohibitions or restrictions on travelling to or entering New Zealand or prohibitions on remaining in New Zealand; or 15
    - (B) prohibitions or restrictions on or in relation to dealing with specified assets by, with, for, or from designated persons; or 20
    - (C) prohibitions or restrictions on or in relation to dealing with specified services by, with, for, or from designated persons; and
  - (ii) specified dealing with designated assets; and
  - (iii) specified dealing with designated services; and 25
- (d) any duties or requirements in relation to compliance with the autonomous sanction (for example, a duty to register with the Ministry before engaging in dealings that are, or may be, dealings to which the autonomous sanction applies).

## 10 Scope and effect of regulations 30

- (1) Regulations made under **section 9** may be of general application or relate only to a specified country or specified countries (or to a specified part of a specified country or specified countries).
- (2) A regulation made under **section 9** that prohibits or restricts a designated person from travelling to or entering New Zealand is an exclusion for the purposes of section 15(1)(e) of the Immigration Act 2009. 35
- (3) A regulation made under **section 9** that prohibits a designated person from remaining in New Zealand is sufficient reason to deport the person for the purposes of section 157(1) of the Immigration Act 2009.

- (4) A regulation made under **section 9** that prohibits or restricts dealing with assets or dealing with services may, in relation to any specified rule in any other enactment,—
- (a) apply it, with or without modifications; or
  - (b) extend it; or 5
  - (c) disapply it, with or without modifications or replacement; or
  - (d) exempt from it; or
  - (e) suspend it.
- 11 Designation notice identifying persons, assets, or services described in regulations** 10
- (1) The Minister may, by notice in the *Gazette*, designate, in relation to a description in regulations made under **section 9**,—
- (a) a person meeting that description, or within the class described, as a designated person; or
  - (b) an asset meeting that description, or within the class described, as a designated asset; or 15
  - (c) a service meeting that description, or within the class described, as a designated service.
- (2) The Minister must not give a designation notice unless the Minister is satisfied that the notice— 20
- (a) identifies persons, assets, or services in a way that is consistent with the description in regulations made under **section 9**; and
  - (b) is required for the purpose of the regulations.
- 12 Regulations and designation notices to have fixed term unless extended**
- (1) Regulations and designation notices must include a date on which they are revoked, and that date must be the earliest of— 25
- (a) the close of the day that is 3 years after the date on which the regulations or notice came into effect; and
  - (b) a date specified in the regulations or notice; and
  - (c) in the case of a notice, the date on which the regulation to which it relates is revoked. 30
- (2) However, despite **subsection (1)**, on or before the revocation date, that date may be extended (by amending it) if,—
- (a) in relation to regulations, the Minister recommends an extension because the Minister is satisfied that the regulations are still required for the purpose of the regulations; and 35
  - (b) in relation to a designation notice, the Minister is satisfied that the designation—

- (i) currently identifies persons, assets, or services in a way that is consistent with the description in regulations made under **section 9**; and
  - (ii) is still required for the purpose of the regulations.
- (3) The revocation date amended under **subsection (2)** must be the earliest of— 5
- (a) the close of the day that is 3 years after the date on which the extension came into effect; and
  - (b) a date specified in the regulations or notice; and
  - (c) in the case of a notice, the date on which the regulation to which it relates is revoked. 10

*Applications for revocation, amendment, or exemption*

**13 Applications for revocation, amendment, or exemption**

- (1) Any person may apply to the Minister, on the basis of humanitarian need or for any other reason, to request—
- (a) that the Minister recommend the amendment or revocation of a regulation made under **section 9**: 15
  - (b) the amendment or revocation of a designation notice:
  - (c) an exemption from an autonomous sanction for a specified and individual situation, in relation to—
    - (i) particular persons, assets, or services; and 20
    - (ii) particular events or dealings in relation to those persons, assets, or services.
- (2) An application must—
- (a) be in writing; and
  - (b) include the applicant's contact details; and 25
  - (c) set out the circumstances relied upon by the applicant to justify the revocation, amendment, or exemption.
- (3) The Minister must decide the application in a way that is consistent with the purpose of the regulations providing for the autonomous sanction.
- (4) The Minister must decide the application as soon as is reasonably practicable after receiving it and must notify the applicant of the decision. 30
- (5) The Minister must set out the reasons for an exemption in the exemption.
- (6) The Minister is not required to consider an application for the amendment or revocation of a regulation or a designation notice if the applicant, or any other person on behalf of the applicant, has made another application in relation to the same matter within 12 months preceding the application. 35

- (7) An exemption is not a legislative instrument but is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

*Autonomous sanctions register*

- 14 Autonomous sanctions register** 5
- (1) The Secretary must maintain a register that lists all current autonomous sanctions, including—
- (a) descriptions of any designated person, designated asset, and designated service, and of any prohibited or restricted dealings; and
  - (b) exemptions from autonomous sanctions. 10
- (2) The Secretary must—
- (a) publish the register on an Internet site maintained by, or on behalf of, the Ministry; and
  - (b) ensure that the register is available for public inspection at all reasonable times. 15
- (3) The Secretary must inform relevant departments of changes to the register.
- (4) Any failure to comply with this section does not invalidate the autonomous sanctions involved.

*Duty to report suspicions*

- 15 Duty to report suspicions** 20
- (1) This section applies to—
- (a) designated assets; and
  - (b) assets owned or controlled, directly or indirectly, by a designated person; and
  - (c) designated services; and 25
  - (d) services provided, directly or indirectly, to a designated person.
- (2) A duty holder in possession or in immediate control of assets that the duty holder suspects on reasonable grounds are, or may be, assets to which this section applies must, as soon as practicable after forming that suspicion, report it to the Commissioner. 30
- (3) A duty holder that is to provide or is providing services that the duty holder suspects on reasonable grounds are, or may be, services to which this section applies must, as soon as practicable after forming that suspicion, report it to the Commissioner.
- (4) A report under **subsection (2) or (3)** must be provided in any prescribed manner and contain any prescribed details. 35

- (5) However, if the urgency of the situation requires, a report under **subsection (2) or (3)** may be made orally to a constable but, in that case, the duty holder must, as soon as practicable, provide the Commissioner with a report in any prescribed manner that contains any prescribed details.
- (6) The Commissioner— 5
- (a) must disclose any information reported under this section to the Ministry; and
- (b) may disclose any information reported under this section to any government agency for law enforcement purposes if satisfied that the agency has a proper interest in receiving the information. 10
- (7) Nothing in this section requires a lawyer to disclose any privileged communication.
- (8) In this section,—
- Commissioner** has the same meaning as in section 4 of the Policing Act 2008
- constable** has the same meaning as in section 4 of the Policing Act 2008 15
- duty holder** means—
- (a) a bank that is a registered bank under the Reserve Bank of New Zealand Act 1989:
- (b) a person who is declared by regulations made under **section 26** to be a duty holder for the purposes of this section because the person is considered by the Minister as likely to— 20
- (i) come into possession or immediate control of assets to which this section applies; or
- (ii) provide services to which this section applies
- law enforcement purposes** has the same meaning as in section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 25
- privileged communication** has the same meaning as in section 42 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
- Compare: 2002 No 34 s 43; 2009 No 35 ss 40, 42, 139
- Protection for persons with obligation or duty imposed by or under this Act* 30
- 16 Protection of identity of persons making reports**
- (1) This section applies to the following information:
- (a) any report under **section 15**:
- (b) any information the disclosure of which will identify, or is reasonably likely to identify, any person— 35
- (i) as a person who, in the person’s capacity as an officer, employee, or agent of a duty holder, has been involved with assets or services that were the subject of a report under **section 15**; or

- (ii) as a person who has provided a report under **section 15**:
- (c) any information that discloses or is reasonably likely to disclose the existence of a report under **section 15**.
- (2) The Commissioner and employees of the Ministry may not 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, or prosecution of an offence against **section 22**. 5
- (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. 10
- Compare: 1996 No 9 s 21; 2002 No 34 s 47 15

## 17 Protection for persons with obligation or duty imposed by or under this Act

- A person with an obligation or a duty imposed by or under this Act is immune from liability in criminal and civil proceedings for any act done or omitted to be done to comply with that obligation or duty if the act or omission— 20
- (a) was in good faith; and
- (b) was reasonable in the circumstances.

### *Enforcement*

## 18 Civil enforcement

- (1) This section and **sections 19 to 21** apply to a person if,— 25
- (a) without lawful justification or reasonable excuse, the person has breached or has failed to comply with an autonomous sanction; or
- (b) there are reasonable grounds to believe that the person is likely to breach or fail to comply with an autonomous sanction.
- (2) The Attorney-General may— 30
- (a) issue a formal warning to the person (in any prescribed manner and containing any prescribed information):
- (b) accept an enforceable undertaking from the person under **section 19**:
- (c) seek an order of the court under **section 20** against the person for breach of an enforceable undertaking: 35
- (d) seek an injunction under **section 21** against the person.

Compare: 2009 No 35 ss 78–79

**19 Enforceable undertakings**

- (1) The Attorney-General may accept a written undertaking given by a person in connection with the person's compliance with an autonomous sanction.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Attorney-General. 5

Compare: 2009 No 35 s 81

**20 Enforcement of undertakings**

- (1) If the Attorney-General considers that a person who gave an undertaking under **section 19** has breached 1 or more of its terms, the Attorney-General may apply to the court for an order under **subsection (2)**. 10
- (2) The court may, if satisfied that a person has breached 1 or more of the terms of an enforceable undertaking, make any or all of the following orders:
- (a) an order directing the person to comply with any of the terms of the undertaking:
- (b) an order directing the person to pay to the Crown an amount up to the amount of any financial benefit that the person has obtained directly or indirectly from, and that is reasonably attributable to, the breach: 15
- (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach. 20

Compare: 2009 No 35 s 82

**21 Injunctions**

- (1) The court may grant an injunction restraining a person from breaching or failing to comply with an autonomous sanction.
- (2) The injunction may be an interim one if the court thinks that is desirable, but the court must not— 25
- (a) require the Crown to give an undertaking as to damages as a condition of granting the interim injunction; or
- (b) take into account that the Crown is not required to give an undertaking as to damages. 30
- (3) The court may rescind or vary an injunction granted under this section.
- (4) **Subsections (1) and (2)** apply whether or not the person—
- (a) intends to engage again, or to continue to engage, in conduct that breaches or fails to comply with an autonomous sanction:
- (b) has previously engaged in such conduct. 35
- (5) The powers in this section do not limit any other powers of the High Court relating to the granting of injunctions.

Compare: 2007 No 7 s 44; 2009 No 35 ss 84, 87–89

## 22 Offences

- (1) A person commits an offence if the person, without lawful justification or reasonable excuse, knowingly or recklessly breaches, or fails to comply with, an autonomous sanction.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,— 5
  - (a) in the case of an individual, to imprisonment for a term not exceeding 5 years or a fine not exceeding \$100,000, or both; and
  - (b) in the case of an entity, to a fine not exceeding \$1 million.
- (3) A person commits an offence if the person, in connection with an application under **section 13**, provides (whether at the time of the application or not) any information or document that— 10
  - (a) includes anything that the person knows is false or misleading in a material particular; or
  - (b) omits anything the omission of which the person knows makes the information or document false or misleading in a material particular. 15
- (4) A person who commits an offence against **subsection (3)** is liable on conviction,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 5 years or a fine not exceeding \$100,000, or both; and 20
  - (b) in the case of an entity, to a fine not exceeding \$1 million.
- (5) A person commits an offence if the person—
  - (a) knowingly fails to provide a report required under **section 15**; or
  - (b) includes anything in a report required under **section 15** that the person knows is false or misleading in a material particular; or 25
  - (c) omits anything from a report required under **section 15** the omission of which the person knows makes the report false or misleading in a material particular.
- (6) A person who commits an offence against **subsection (5)** is liable on conviction,— 30
  - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or a fine not exceeding \$20,000, or both; and
  - (b) in the case of an entity, to a fine not exceeding \$200,000.
- (7) A person who knowingly breaches **section 16(4)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 35
- (8) If, in proceedings against an entity for an offence under this section, it is necessary to establish the state of mind of the entity, it is sufficient to show that 1 individual working for the entity, acting within the scope of the person's actual or apparent authority, had that state of mind.

**23 Application of Customs and Excise Act 1996**

All the provisions of the Customs and Excise Act 1996 that apply with respect to prohibited imports or to prohibited exports (except section 209 of that Act) apply with respect to assets that are subject to, or that otherwise relate to, an autonomous sanction—

5

- (a) as if the importation or exportation of the assets were prohibited by or under section 54 or 56 of that Act; and
- (b) with any necessary modifications.

Compare: 1996 No 37 s 11

*Extraterritorial application*

10

**24 Extraterritorial jurisdiction for offences**

(1) Even if the acts or omissions alleged to constitute an offence against **section 22** occurred wholly outside New Zealand, proceedings may be brought for an offence under that section—

- (a) if the person to be charged—
  - (i) is a New Zealand citizen; or
  - (ii) is ordinarily resident in New Zealand; or
  - (iii) is an entity incorporated or registered under New Zealand law; or
- (b) if any of the acts or omissions are alleged to have occurred on board—
  - (i) a ship registered, or required to be registered, under the Ship Registration Act 1992; or
  - (ii) a ship used as a ship of the New Zealand Defence Force; or
  - (iii) an aircraft registered, or required to be registered, in New Zealand under the Civil Aviation Act 1990; or
  - (iv) an aircraft for the time being used as an aircraft of the New Zealand Defence Force; or
  - (v) an aircraft that is leased to a lessee whose principal place of business is in New Zealand, or who is a New Zealand citizen or a person ordinarily resident in New Zealand.

15

20

25

(2) The following sections of the Crimes Act 1961 do not apply in respect of an offence against **section 22**:

30

- (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).

35

(3) Nothing in this section limits the application of **section 22** in respect of—

- (a) acts or omissions that occurred wholly in New Zealand; or

- (b) the application of section 7 of the Crimes Act 1961 to the occurrence in New Zealand of—
- (i) an act or omission forming part of an offence; or
  - (ii) an event necessary to the completion of an offence; or
- (c) the application of section 8A of the Crimes Act 1961. 5
- (4) For the purposes of this section, **ordinarily resident in New Zealand** has the same meaning as in section 4 of the Crimes Act 1961.
- Compare: 1961 No 43 s 7A; 2004 No 69 s 13

*Attorney-General's consent*

- 25 Attorney-General's consent required** 10
- (1) No charging document may be filed against any person in relation to an offence against **section 22** unless the Attorney-General consents to the filing of the charging document.
- (2) A person alleged to have committed an offence may be arrested or a warrant for arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the consent of the Attorney-General has not yet been obtained under **subsection (1)**, but no further or other proceedings may be taken until the consent has been obtained. 15

*Other regulation-making powers*

- 26 Other regulation-making powers** 20
- The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for any or all of the following purposes:
- (a) prescribing the circumstances in which compensation may be payable to persons in relation to assets or services that are adversely affected by the imposition of autonomous sanctions, including the conditions applying to, the eligibility for, and the method of calculating the amount of the compensation: 25
  - (b) declaring a person or class of persons to be a duty holder and the circumstances and conditions in which a person or class of persons is to be a duty holder for the purposes of **section 15**: 30
  - (c) prescribing the information to be included in a report required under **section 15** and the manner in which that report must be provided:
  - (d) prescribing the information to be included in a formal warning issued under **section 18(2)(a)** and the manner in which that warning must be provided: 35
  - (e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

*Consequential amendment***27 Consequential amendment to Privacy Act 1993**

- (1) This section amends the Privacy Act 1993.
- (2) In Schedule 2, Part 1, after the item relating to the Auditor Regulation Act 2011, insert:

Autonomous Sanctions Act **2017****Section 14**

5

**Part 2****Amendments to United Nations Act 1946****28 Amendments to United Nations Act 1946****This Part** amends the United Nations Act 1946.**29 Section 3 amended (Liability for breach of regulations)**

10

- (1) Replace section 3(1) with:

(1) A person commits an offence if the person knowingly or recklessly breaches, or fails to comply with, any regulations made under this Act.

(1A) A person who commits an offence against **subsection (1)** is liable on conviction,—

15

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years or a fine not exceeding \$100,000, or both; and

(b) in the case of a body corporate, to a fine not exceeding \$1 million.

(1B) A person commits an offence if the person—

(a) knowingly fails to provide a report required under **clause 1 of the Schedule**; or

20

(b) includes any thing in a report required under **clause 1 of the Schedule** that the person knows is false or misleading in a material particular; or

(c) omits any thing in a report required under **clause 1 of the Schedule** the omission of which the person knows makes the report false or misleading in a material particular.

25

(1C) A person who commits an offence against **subsection (1B)** is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 1 year or a fine not exceeding \$20,000, or both; or

30

(b) in the case of a body corporate, to a fine not exceeding \$200,000.

(1D) A person who knowingly breaches **clause 2(4) of the Schedule** commits an offence and is liable on conviction to a fine not exceeding \$10,000.

- 
- (1E) If, in proceedings against a body corporate for an offence under this section, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that 1 individual working for the body corporate, acting within the scope of the person's actual or apparent authority, had that state of mind.
- (2) After section 3(3), insert:
- (4) The **Schedule** applies to regulations made under this Act.

5

**30 New Schedule inserted**

After section 5, insert the **Schedule** set out in the **Schedule** of this Act.

**Schedule**  
**New Schedule of United Nations Act 1946 inserted**

s 30

**Schedule**  
**Provisions relating to breaches of regulations made under this Act** 5

s 3(4)

**Part 1**  
**Duty to report suspicions**

- 1 Duty to report suspicions**
- (1) Subject to any regulations made under section 2, this clause applies to assets and services that are, or may be, relevant to a breach of, or failure to comply with, regulations made under this Act. 10
- (2) A duty holder in possession or immediate control of assets that the duty holder suspects on reasonable grounds are, or may be, assets to which this clause applies must, as soon as practicable after forming that suspicion, report it to the Commissioner. 15
- (3) A duty holder that is to provide or is providing services that the duty holder suspects on reasonable grounds are, or may be, services to which this clause applies must, as soon as practicable after forming that suspicion, report it to the Commissioner. 20
- (4) A report under **subclause (2) or (3)** must be provided in any prescribed manner and contain any prescribed details.
- (5) However, if the urgency of the situation requires, a report under **subclause (2) or (3)** may be made orally to a constable but, in that case, the duty holder must, as soon as practicable, provide the Commissioner with a report in any prescribed manner that contains any prescribed details. 25
- (6) The Commissioner—
- (a) must disclose any information reported under this clause to the Ministry of Foreign Affairs and Trade; and
- (b) may disclose any information reported under this clause to any government agency for law enforcement purposes if satisfied that the agency has a proper interest in receiving the information. 30
- (7) Nothing in this clause requires a lawyer to disclose any privileged communication.
- (8) In this clause,— 35
- Commissioner** has the same meaning as in section 4 of the Policing Act 2008

**constable** has the same meaning as in section 4 of the Policing Act 2008

**duty holder** means—

(a) a bank that is a registered bank under the Reserve Bank of New Zealand Act 1989:

(b) a person who is declared by regulations made under section 2 to be a duty holder for the purposes of this clause because the person is considered by the Minister of Foreign Affairs and Trade as likely to— 5

(i) come into possession or immediate control of assets to which this clause applies; or

(ii) provide services to which this clause applies 10

**law enforcement purposes** has the same meaning as in section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

**privileged communication** has the same meaning as in section 42 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Compare: 2002 No 34 s 43; 2009 No 35 ss 40, 42, 139 15

## Part 2

### Protection for persons with obligation or duty imposed by or under this Act

#### 2 Protection of identity of persons making reports

(1) This clause applies to the following information: 20

(a) any report under **clause 1**:

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

(i) as a person who, in the person's capacity as an officer, employee, or agent of a duty holder, has been involved with assets or services that were the subject of a report under **clause 1**; or 25

(ii) as a person who has provided a report under **clause 1**:

(c) any information that discloses or is reasonably likely to disclose the existence of a report under **clause 1**.

(2) The Commissioner and employees of the Ministry of Foreign Affairs and Trade may not disclose any information to which this clause applies except for the purposes of the enforcement of this Act, or for the purposes of the detection, investigation, or prosecution of an offence against section 3. 30

(3) Nothing in **subclause (2)** limits the provision of assistance under the Mutual Assistance in Criminal Matters Act 1992. 35

(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 clause 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.

Compare: 1996 No 9 s 21; 2002 No 34 s 47

### **3 Protection for persons with obligation or duty imposed by or under this Act** 5

A person with an obligation or a duty imposed by or under this Act is immune from liability in criminal and civil proceedings for any act done or omitted to be done to comply with that obligation or duty if the act or omission—

- (a) was in good faith; and 10
- (b) was reasonable in the circumstances.

Compare: 2009 No 35 s 77

## **Part 3 Civil enforcement**

### **4 Civil enforcement** 15

- (1) This clause and **clauses 5 to 7** apply to a person if,—
  - (a) without lawful justification or reasonable excuse, the person has breached or has failed to comply with regulations made under this Act; or
  - (b) there are reasonable grounds to believe that the person is likely to engage in such conduct. 20
- (2) The Attorney-General may—
  - (a) issue a formal warning to the person (in any manner and containing any prescribed information):
  - (b) accept an enforceable undertaking from the person under **clause 5**:
  - (c) seek an order of the High Court under **clause 6** against the person for breach of an enforceable undertaking: 25
  - (d) seek an injunction under **clause 7** against the person.

Compare: 2009 No 35 ss 78, 79

### **5 Enforceable undertakings** 30

- (1) The Attorney-General may accept a written undertaking given by a person in connection with the person's compliance with regulations made under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Attorney-General.

Compare: 2009 No 35 s 81

**6 Enforcement of undertakings**

- (1) If the Attorney-General considers that a person who gave an undertaking under **clause 5** has breached 1 or more of its terms, the Attorney-General may apply to the High Court for an order under **subclause (2)**.
- (2) The High Court may, if satisfied that a person has breached 1 or more of the terms of an enforceable undertaking, make any or all of the following orders: 5
- (a) an order directing the person to comply with any of the terms of the undertaking:
  - (b) an order directing the person to pay to the Crown an amount up to the amount of any financial benefit that the person has obtained directly or indirectly from, and that is reasonably attributable to, the breach: 10
  - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach.

Compare: 2009 No 35 s 82

15

**7 Injunctions**

- (1) The High Court may grant an injunction restraining a person from breaching or failing to comply with regulations made under this Act.
- (2) The injunction may be an interim one if the court thinks that is desirable, but the court must not— 20
- (a) require the Crown to give an undertaking as to damages as a condition of granting the interim injunction; or
  - (b) take into account that the Crown is not required to give an undertaking as to damages.
- (3) The court may rescind or vary an injunction granted under this clause. 25
- (4) **Subclauses (1) and (2)** apply whether or not the person—
- (a) intends to engage again, or to continue to engage, in conduct that breaches or fails to comply with regulations made under this Act:
  - (b) has previously engaged in such conduct.
- (5) The powers in this clause do not limit any other powers of the court relating to the granting of injunctions. 30

Compare: 2009 No 35 ss 84, 87–89