Maritime Powers Act 2022

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Commencement	see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Maritime Powers Act 2022.

2 Commencement

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

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to—

(a) provide clear powers for the enforcement of New Zealand's criminal law in international waters; and

(b) uphold New Zealand's rights and obligations under international law, particularly the United Nations Convention on the Law of the Sea, consistent with international human rights law.

4 Interpretation

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

Armed Forces has the same meaning as in section 2(1) of the Defence Act 1990

biometric information, in relation to a person, means information that comprises—

(a) 1 or more of the following kinds of information:

(i) a photograph of all or any part of the person's head and shoulders:

(ii) impressions of the person's fingerprints:

(iii) a scan of the person's irises; and

(b) a record, whether physical or electronic, of the personal information that is capable of being used for biometric matching

coastal State means a State described in section 14(a)

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

contiguous zone, in relation to New Zealand, has the same meaning as in section 8A of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

continental shelf, in relation to New Zealand, has the same meaning as in section 2(1) of the Continental Shelf Act 1964

Crown entity has the same meaning as in section 7(1) of the Crown Entities Act 2004

Customs officer has the same meaning as in section 5(1) of the Customs and Excise Act 2018

Customs place has the same meaning as in section 5(1) of the Customs and Excise Act 2018

enforcement officer means—

(a) a constable:

(b) a Customs officer:

(c) a member of the Armed Forces:

(d) an Endangered Species Officer within the meaning of section 35(1) of the Trade in Endangered Species Act 1989 or appointed under section 35(2) of that Act:

(e) a ranger appointed under section 38(1) of the Wildlife Act 1953:

(f) a warranted officer appointed under section 59(1) of the Conservation Act 1987

exclusive economic zone, in relation to New Zealand, has the same meaning as in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

extraterritorial offence has the meaning given to it in section 5

flag State, in relation to a ship, means the State in which the ship is registered or whose flag or marks of registry it is entitled to fly or display

foreign ship means a ship—

(a) that is not a New Zealand ship; and

(b) that—

  (i) is registered in a State other than New Zealand; or

  (ii) is entitled to fly the flag, or to display the marks of registry, of a State other than New Zealand

foreign waters means the sea and other waters within the outer limits of the territorial sea of a State other than New Zealand

high seas means all parts of the sea not included in—

(a) the internal waters, territorial sea, or exclusive economic zone of New Zealand or another State; or

(b) the archipelagic waters of an archipelagic State

internal waters, in relation to New Zealand, has the same meaning as in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

international waters means all waters beyond the territorial sea of New Zealand or of any other State

New Zealand means the land and waters enclosed by the outer limits of the territorial sea of New Zealand (as described in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977)

New Zealand ship has the same meaning as in section 2 of the Maritime Transport Act 1994

person in charge of the ship, in relation to a ship, means a person who an enforcement officer reasonably believes is in charge of the ship, and **person in charge of a ship** has a corresponding meaning

personal information has the same meaning as in section 7(1) of the Privacy Act 2020

presence requirement means an express provision in an enactment to the effect that a person is liable for an offence, or that proceedings may be brought against a person in respect of an offence, only if the person—

(a) is present in New Zealand; or

(b) has been found in New Zealand and has not been extradited; or

(c) arrives in New Zealand on board a ship in the course or at the end of a journey during which the act or omission that is an offence against New Zealand law was done or omitted

pursued without interruption has the meaning given to it in section 6

ship has the same meaning as in section 2 of the Maritime Transport Act 1994

ship without nationality means a ship that—

(a) is not registered in, or otherwise entitled to fly the flag or display the marks of registry of, any State; or

(b) sails under the flags of 2 or more States or relevant territories, or under the flags of a State and a relevant territory, using them according to convenience

specified offence means an offence against New Zealand law punishable by imprisonment for life or by 2 or more years' imprisonment

territorial sea, in relation to New Zealand, has the same meaning as in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

unique identifier has the meaning given to it in the Search and Surveillance Act 2012.

(2) For the purposes of this Act, a ship is **involved in an extraterritorial offence** if—

(a) an extraterritorial offence has been, is being, or will be committed on the ship; or

(b) the ship has been, is, or is likely to be otherwise involved in the commission, or in facilitating the commission, of an extraterritorial offence.

5 Meaning of extraterritorial offence

(1) In this Act, **extraterritorial offence**, in relation to a person, means—

(a) an act or omission done by the person outside New Zealand or in any particular place outside New Zealand for which the person is liable on conviction under New Zealand law to imprisonment for life or to 2 or more years' imprisonment; or

(b) an offence against New Zealand law for which the person is liable on conviction to imprisonment for life or to 2 or more years' imprisonment because of an enactment providing that an act or omission of the person or any other person that occurred outside New Zealand is deemed to have occurred in New Zealand.

Examples

Example 1

Proceedings may be brought in New Zealand against a New Zealand citizen for acts or omissions outside New Zealand that constitute the offence of migrant smuggling under section 98C of the Crimes Act 1961 or the offence of human trafficking under section 98D of that Act (*see* section 7A of the Crimes Act 1961).

Example 2

A New Zealand citizen may be liable for an act done or omitted outside New Zealand that, if done or omitted in New Zealand, would be the offence of dealing with controlled drugs under section 6 of the Misuse of Drugs Act 1975 (*see* section 12C of that Act).

Example 3

A person may be convicted of piracy under section 92 of the Crimes Act 1961 whether the act of piracy is done within or outside New Zealand.

Example 4

A person may be liable for an act done or omitted on board a New Zealand ship outside New Zealand that, if done or omitted in New Zealand, would be an offence punishable by 2 or more years' imprisonment (*see* section 8 of the Crimes Act 1961).

Effect of presence requirement

(2) For the purpose of exercising powers under this Act, an offence that has a presence requirement in relation to a person may be treated as an extraterritorial offence under subsection (1) in relation to that person if an enforcement officer has reasonable grounds to believe that the journey of the ship the person is on

board is intended to end in New Zealand or that New Zealand is intended to be the next place in the course of the ship's journey.

Effect of requirement for flag State consent for extraterritorial jurisdiction

(3) If an enactment other than this Act has the effect that an act or omission done outside New Zealand by a person is an extraterritorial offence as described in subsection (1) only if the consent of a flag State is given to New Zealand exercising jurisdiction,—

(a) the requirement for the consent of the flag State may be satisfied under this Act; and

(b) if that requirement is satisfied under this Act, it is treated as having been satisfied at all times in relation to the other enactment.

6 Meaning of pursued without interruption

(1) A ship is **pursued without interruption** if—

(a) the person in charge of the ship is required by an enforcement officer, or other person having lawful authority to do so, to stop the ship or facilitate boarding of the ship; and

(b) the enforcement officer or other person communicates the requirement by the giving of a visual or an auditory signal to stop (which, without limitation, may consist of hailing the ship by radio) using reasonable efforts to ensure that the person in charge of the ship understands and is aware of the communication; and

(c) the requirement is not complied with; and

(d) the ship is pursued from that place; and

(e) the pursuit is not interrupted.

(2) A requirement communicated in accordance with subsection (1)(b), is treated as communicated whether or not the person in charge of the ship actually understands or is aware of the communication.

(3) For the purpose of subsection (1)(e), a pursuit is not interrupted only because—

(a) it is continued by an enforcement officer, or other person having lawful authority to do so, other than the person who communicated the requirement referred to in subsection (1)(a); or

(b) it is begun, or taken over, by a ship or an aircraft (including a ship or an aircraft of another State) other than the ship or aircraft from which the requirement was communicated; or

(c) if the pursuit is continued by a ship or aircraft of another State, there is no enforcement officer on board the ship or aircraft; or

(d) the ship being pursued is out of sight of any or all of the enforcement officers, or officers of a foreign State, involved in the pursuit; or

(e) the ship cannot be tracked by radio, radar, satellite, sonar, or any other remote means.

7 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

8 Act binds the Crown

This Act binds the Crown.

9 Act does not limit other functions, duties, or powers

(1) Unless otherwise provided in this Act, this Act does not limit or affect the functions, duties, or powers of any person under any other enactment or rule of law.

(2) Without limiting subsection (1), nothing in this Act—

(a) limits powers exercisable in accordance with New Zealand's rights and obligations under international law under any enactment or otherwise in internal waters, the territorial sea, the contiguous zone, the exclusive economic zone, the high seas, or with respect to the continental shelf; or

(b) extinguishes any power or authority exercisable by virtue of the prerogative of the Crown.

10 Immunities of warships, etc, not affected

Nothing in this Act limits the immunities of the following:

(a) any foreign warship:

(b) any other foreign governmental ship operated for non-commercial purposes:

(c) any foreign military aircraft:

(d) members of the crew of a ship or an aircraft to which any of paragraphs (a) to (c) apply.

Part 2
Powers

Geographical application of powers in this Part

11 Geographical application of powers in this Part

(1) This Act applies to any ship that is in any of the following:

(a) international waters:

(b) foreign waters.

(2) This section is subject to section 33.

Restriction on exercise of powers in relation to foreign ship

12 Restriction on exercise of powers in relation to foreign ship

(1) In relation to a foreign ship, the powers under this Act are exercisable—

(a) only if, and to the extent that, the flag State has consented to the exercise of the powers; and

(b) subject to any conditions that the flag State attaches to its consent.

(2) Consent is not required under subsection (1) (and that subsection does not apply) if the powers under this Act are exercised—

(a) in respect of an offence dealt with in—

(i) sections 92 to 97 of the Crimes Act 1961 (which relate to piracy); or

(ii) section 98 of the Crimes Act 1961 (which relates to dealing in slaves); or

(b) in the exclusive economic zone in respect of an offence against—

(i) the Marine Mammals Protection Act 1978; or

(ii) the Wildlife Act 1953 in respect of marine wildlife; or

(c) after a ship has been pursued without interruption from New Zealand in respect of a contravention of New Zealand law; or

(d) after a ship has been pursued without interruption from within the contiguous zone to investigate or prevent a contravention of New Zealand's customs, fiscal, immigration, or sanitary laws in New Zealand; or

(e) after a ship has been pursued without interruption from within the exclusive economic zone to investigate or prevent an offence against—

(i) the Marine Mammals Protection Act 1978; or

(ii) the Wildlife Act 1953 in respect of marine wildlife; or

(f) after a ship has been pursued without interruption from the sea above the continental shelf in respect of a contravention of New Zealand law over which New Zealand has jurisdiction under section 7(1) of the Continental Shelf Act 1964.

(3) For the purpose of subsection (2)(c), a pursuit begun against a ship outside New Zealand is to be treated as a pursuit of that ship from New Zealand if—

(a) that ship and 1 or more other ships are working as a team in relation to any matter that forms grounds for the exercise of powers under this Act; and

(b) at least 1 of the ships is in New Zealand at the time the pursuit begins.

(4) For the purpose of subsection (2)(d), a pursuit begun against a ship outside the contiguous zone is to be treated as a pursuit of that ship from within the contiguous zone if—

(a) 2 or more ships are working as a team in relation to any matter that forms grounds for the exercise of powers under this Act; and

(b) at least 1 of the ships is within the contiguous zone at the time the pursuit begins.

(5) For the purpose of subsection (2)(e), a pursuit begun against a ship outside the exclusive economic zone is to be treated as a pursuit of that ship from within the exclusive economic zone if—

(a) 2 or more ships are working as a team in relation to any matter that forms grounds for the exercise of powers under this Act; and

(b) at least 1 of the ships is within the exclusive economic zone at the time the pursuit begins.

(6) For the purpose of subsection (2)(f), a pursuit begun against a ship in the sea beyond the outer limits of the continental shelf is to be treated as a pursuit of that ship from the sea above the continental shelf if—

(a) 2 or more ships are working as a team in relation to any matter that forms grounds for the exercise of powers under this Act; and

(b) at least 1 of the ships is in the sea above the continental shelf at the time the pursuit begins.

Exercise of powers to verify nationality of ship

13 Power to verify nationality of ship without consent of flag State

(1) This section applies in relation to a ship that an enforcement officer suspects on reasonable grounds is a ship without nationality.

(2) An enforcement officer may exercise the powers described in section 16(2) without the need for the consent of a flag State.

(3) If, after exercising all or any of the powers described in section 16(2), an enforcement officer is satisfied that a ship has nationality, section 12 applies in respect of the further exercise of powers under this Part.

Restriction on exercise of powers in foreign waters

14 Restriction on exercise of powers in foreign waters

The powers under this Act may be exercised in foreign waters—

(a) only if, and to the extent that, the State in whose waters the powers would be exercised has consented to the exercise of the powers; and

(b) subject to any conditions that the State attaches to its consent.

Effect of requirement for Attorney-General to consent to prosecution on exercise of powers

15 Effect of requirement for Attorney-General to consent to prosecution on exercise of powers

If an enactment provides that proceedings may be brought against a person for an extraterritorial offence only with the consent of the Attorney-General, powers may be exercised under this Act even before that consent has been sought or obtained.

Grounds for exercising powers

16 Grounds for exercising powers

(1) An enforcement officer may exercise the powers in this Part only if—

(a) the enforcement officer—

(i) has reasonable grounds to suspect that a person has committed, is committing, or will commit an offence that is an extraterritorial offence; and

(ii) has reasonable grounds to believe that the person is on a ship; or

(b) the enforcement officer has reasonable grounds to believe there is evidence on a ship of the commission of an extraterritorial offence; or

(c) the enforcement officer has reasonable grounds to suspect a ship is involved in an extraterritorial offence; or

(d) the enforcement officer —

(i) has reasonable grounds to suspect that a person has committed a specified offence in New Zealand; and

(ii) has reasonable grounds to believe that the person is on a ship; or

(e) the enforcement officer has reasonable grounds to believe that there is evidence on a ship of the commission of a specified offence in New Zealand.

(2) Despite subsection (1), the powers in sections 17, 18, and 20(2) may be used for the purpose of verifying the nationality of a ship if an enforcement officer suspects on reasonable grounds that the ship is a ship without nationality.

(3) If, after exercising all or any of the powers described in subsection (2), an enforcement officer is satisfied that a ship is without nationality, the powers under this Part may be exercised in relation to the ship as if it were a New Zealand ship.

(4) No warrant is needed for the exercise of powers under this Part.

Powers

17 Stopping

(1) An enforcement officer may require the person in charge of a ship to stop the ship.

(2) The enforcement officer must communicate the requirement by the giving of a visual or an auditory signal to stop (which, without limitation, may consist of hailing the ship by radio) using reasonable efforts to ensure that the person in charge of the ship understands and is aware of the communication.

(3) A requirement communicated in accordance with subsection (2) is treated as communicated whether or not the person in charge of the ship actually understands or is aware of the communication.

(4) If the person in charge of the ship does not comply with a requirement under subsection (1), an enforcement officer may—

(a) chase the ship:

(b) if the ship continues to fail to stop, do 1 or more of the following:

(i) use any reasonable means to obstruct the passage of the ship:

(ii) use any reasonable means to halt or slow the passage of the ship, including by fouling the propellers of the ship:

(iii) fire a warning shot:

(c) as a last resort, after having fired a warning shot, fire at or onto the ship to compel it to stop.

(5) When exercising powers under this section, an enforcement officer must have regard to—

(a) the safety and welfare of those on board the ship that is being stopped; and

(b) the safety and welfare of those on board the pursuing ship; and

(c) the protection of the marine environment.

18 Boarding

(1) An enforcement officer may board a ship.

(2) An enforcement officer may require the person in charge of a ship to take reasonable steps to facilitate the boarding of the ship.

(3) The requirement may be communicated by any reasonable means.

19 Requirement to identify

An enforcement officer who exercises the power to board a ship or, if more than 1 enforcement officer boards the ship, the enforcement officer in charge of the boarding of the ship must, before or after boarding the ship,—

(a) identify himself or herself to the person in charge of the ship, either by name or by unique identifier; and

(b) state that the power to board the ship is being exercised under this Act and the reason for it unless it is impracticable to do so in the circumstances; and

(c) if the enforcement officer is not in uniform, produce evidence of the officer's identity.

20 Searching

(1) An enforcement officer may—

(a) search a ship for a person who the enforcement officer has reasonable grounds to suspect has committed, is committing, or will commit an extraterritorial offence:

(b) search a ship and any person on the ship for evidence that an extraterritorial offence has been committed, is being committed, or will be committed:

(c) search a ship for a person who the enforcement officer has reasonable grounds to suspect has committed a specified offence in New Zealand:

(d) search a ship and any person on the ship for evidence of the commission of a specified offence in New Zealand.

(2) If an enforcement officer suspects on reasonable grounds that a ship is a ship without nationality, an enforcement officer may search the ship for any evidence relevant to the nationality of the ship.

(3) For the purpose of subsections (1) and (2), an enforcement officer may use any force that is reasonable in the circumstances to enter or break open or access any area within the ship or a thing found on the ship.

(4) Subparts 1 and 4 (except section 121) and subparts 5 and 6 (except section 160) of Part 4 of the Search and Surveillance Act 2012 apply.

(5) Subsection (3) does not limit any provision of the Search and Surveillance Act 2012 applied by subsection (4).

(6) The power to search a person or thing under this section may be exercised on the ship or elsewhere.

21 Internal search of person

(1) In the circumstances set out in subsection (2), an enforcement officer may require a person on a ship to permit a medical practitioner, nominated for the purpose by the enforcement officer, to conduct an internal examination of any part of the person's body by means of—

(a) an X-ray machine or other similar device; or

(b) a manual or visual examination (whether or not facilitated by any instrument or device) through any body orifice.

(2) The circumstances are that—

(a) the person is under arrest for an offence against section 6, 11, 12C, 12E, or 12F of the Misuse of Drugs Act 1975; and

(b) the enforcement officer has reasonable grounds to believe that the person has secreted within his or her body any property—

(i) that may be evidence of the offence with which the person is charged; or

(ii) the possession of which by the person constitutes any other offence against section 6, 11, 12C, 12E, or 12F of the Misuse of Drugs Act 1975.

(3) A medical practitioner must not conduct an internal examination if he or she—

(a) considers that to do so may be prejudicial to the person's health; or

(b) is satisfied that the person is not prepared to permit an internal examination to be conducted.

(4) The power under this section may be exercised on the ship or elsewhere.

22 Requiring production of document or other thing

(1) An enforcement officer may require a person on board a ship to produce any document or other thing.

(2) If anything required to be produced under subsection (1) is stored, or is accessible, on or from any electronic device on the ship, the power in that subsection includes (without limitation) the power to require the person to operate the device as is reasonably necessary.

(3) Section 60 of the Evidence Act 2006 applies in relation to a requirement under subsection (1).

23 Detention of ship

(1) A power in subsection (2) is exercisable in relation to a ship only if, and for so long as, an enforcement officer is satisfied that the exercise of the power is reasonably necessary to enable the other powers in this Part to be exercised in relation to the ship.

(2) An enforcement officer—

(a) may detain the ship at the place where it is stopped under section 17:

(b) may direct—

(i) that the ship proceed to the nearest Customs place or to any other place (in New Zealand or elsewhere) that the officer considers appropriate; and

(ii) that the ship's detention continue during the ship's journey to that place, and at that place once the ship arrives there.

(3) If a direction is given under subsection (2)(b), an enforcement officer may, for the purpose of implementing the direction, do any of the following:

(a) direct any person on the ship to take any specified action:

(b) take charge of the ship:

(c) arrange for the ship to be towed by another ship.

(4) If a ship is detained under this section, an enforcement officer must give written notice of the detention to the person in charge of the ship.

(5) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further written notice by an enforcement officer.

24 Powers in relation to persons on detained ship

(1) This section applies to a person—

(a) on a ship detained under section 23; or

(b) who an enforcement officer reasonably suspects was on the ship when it was detained; or

(c) present near the ship, who an enforcement officer reasonably suspects was on the ship before it was detained.

(2) The person is detained under this section until this section ceases to apply to the person in accordance with subsection (5).

(3) An enforcement officer may take 1 or more of the actions in subsection (4) if the enforcement officer is satisfied that—

(a) it is necessary to do so to facilitate the conduct of a search; or

(b) it is necessary to mitigate a risk to the safety of any person (including an enforcement officer) on board a ship; or

(c) it is necessary to avoid evidence being destroyed, concealed, altered, damaged, or removed; or

(d) there is no other reasonably practicable option in the circumstances, given the nature of the powers being exercised; or

(e) it is necessary to protect the health of any person or public health in New Zealand or elsewhere.

(4) The enforcement officer may—

(a) require the person to supply the person's—

(i) full legal name and any other name by which they are commonly known; and

(ii) date of birth; and

(iii) residential address; and

(iv) nationality; or

(b) require the person to remain in the ship or in a particular place on the ship; or

(c) transfer the person to another ship; or

(d) return the person to the ship.

(5) This section ceases to apply to a person when the earliest of the following occurs:

(a) if the person is on the ship referred to in subsection (1), the ship ceases to be detained:

(b) if the person is not, or is no longer, on the ship referred to in subsection (1), an enforcement officer is satisfied that continued detention of the person is no longer reasonably necessary to—

(i) enable the powers in this Part to be exercised in relation to the person; or

(ii) bring the person to a place of safety:

(c) the person is arrested under this Part.

(6) Subsection (5) does not prevent the arrest or detention of the person under an enactment other than this Act.

(7) Nothing in this section limits section 116 of the Search and Surveillance Act 2012.

25 Power of arrest

(1) An enforcement officer may arrest a person if the enforcement officer has reasonable grounds to believe that the person—

(a) is committing or has committed an extraterritorial offence; or

(b) has committed a specified offence in New Zealand.

(2) If an enforcement officer who is not a constable arrests a person under this section, the enforcement officer must, as soon as practicable after the person arrested arrives in the internal waters of New Zealand or reaches land in New Zealand (unless the person is sooner released), deliver the arrested person into the custody of a constable.

(3) Nothing in this section limits the application of section 315 of the Crimes Act 1961.

26 Power to execute warrant of arrest

(1) An enforcement officer who is a constable may execute a warrant of arrest that is in force under New Zealand law for a failure to appear in court, or a failure to answer bail, in respect of a charge for—

(a) an extraterritorial offence; or

(b) a specified offence alleged to have been committed in New Zealand.

(2) In executing the warrant, the enforcement officer must comply with any requirements in the warrant that would have to be complied with by a person executing the warrant if it were executed in New Zealand.

(3) The requirement in section 316(5) of the Crimes Act 1961 applies in relation to a person arrested under the warrant not from the time of the person's arrest but from the time the person arrives in the internal waters of New Zealand or reaches land in New Zealand.

(4) Nothing in this section limits the power in section 25.

27 Application of certain provisions in relation to power of arrest

(1) The following provisions apply in relation to the use of the power of arrest under this Part:

(a) sections 30 to 41 and 316(1) of the Crimes Act 1961; and

(b) sections 82 and 85 to 88 of the Search and Surveillance Act 2012.

(2) The provisions specified in subsection (1) apply regardless of whether the person arrested is a New Zealand citizen or ordinarily resident in New Zealand or where the arrest is made.

(3) The requirement in section 316(5) of the Crimes Act 1961 applies in relation to a person arrested under this Part not from the time of the person's arrest but from the time the person arrives in the internal waters of New Zealand or reaches land in New Zealand.

28 Lifting person or thing from the sea

An enforcement officer may for any purpose connected with the exercise of powers under this Part cause a person or thing to be lifted from the sea.

29 Requiring biometric information

(1) The following persons may be required by an enforcement officer to allow any biometric information to be taken for 1 or more of the purposes in subsection (2):

(a) a person who is detained under section 24:

(b) a person who has been arrested under section 25.

(2) Biometric information may be taken and used to establish or verify the identity of the person referred to in subsection (1) for law enforcement purposes.

Other provisions concerning powers under this Part

30 Use of force

An enforcement officer may use reasonable force for the purpose of exercising a power under this Part.

31 No interference with communication with flag State

If a ship is a foreign ship, an enforcement officer must not interfere with any attempt by the person in charge of the ship to communicate with the authorities of the flag State at any time while powers under this Part are being exercised.

32 Disposal of unlawful items

(1) This section applies if an enforcement officer finds on board a ship any item the enforcement officer believes on reasonable grounds is an item—

(a) the possession of which is unlawful under New Zealand law; or

(b) the importation or exportation of which, or trade in which, is unlawful under New Zealand law.

(2) The item is forfeited to the Crown and must be seized by an enforcement officer and dealt with in accordance with this section.

(3) The enforcement officer may, subject to any requirement of the Biosecurity Act 1993, deliver the item to a constable or destroy or otherwise dispose of the item.

(4) Despite subsection (3), if the item is a specimen, the enforcement officer must—

(a) hold the specimen on board the ship pending an assessment by an inspector under the Biosecurity Act 1993; or

(b) deliver the specimen to an inspector.

(5) If an inspector removes or is delivered a specimen in accordance with subsection (4), the inspector—

(a) must consult the Director-General of Conservation; and

(b) may deliver the specimen to the Director-General of Conservation.

(6) If an inspector delivers a specimen to the Director-General of Conservation as described in subsection (5)(b), the inspector may also deliver a notice to the Director-General stating one of the following:

(a) that the specimen has been given a biosecurity clearance:

(b) that the specimen—

(i) has not been given a biosecurity clearance; and

(ii) must be held, handled, or managed in the manner specified in the notice.

(7) In this section,—

inspector has the same meaning as in section 2 of the Biosecurity Act 1993

specimen means a specimen of—

(a) wildlife within the meaning of that term in the Wildlife Act 1953, whether live or dead or complete or incomplete:

(b) an endangered species, a threatened species, or an exploited species within the meaning of those terms in section 3(1) of the Trade in Endangered Species Act 1989.

Continuation of powers under this Part in relation to ship, person, or item coming to New Zealand

33 Continuation of powers under this Part in relation to ship, person, or thing coming to New Zealand

(1) The powers under this Part may be exercised in the following places in relation to a ship, a person, or a thing if exercised as part of the continuous exercise of powers begun under this Part in international waters or foreign waters:

(a) New Zealand's territorial sea or internal waters:

(b) a port in New Zealand:

(c) any place in New Zealand where a ship in respect of which powers have been exercised under this Part reaches land.

(2) For the purposes of this section, the continuous exercise of powers does not end only because—

(a) there is a period of time between the exercise of 1 or more of those powers; or

(b) a ship arrives at a place to which it is directed under section 23 while detention continues under that section.

(3) In this section, **port** has the same meaning as in section 2(1) of the Maritime Transport Act 1994.

Part 3
Offences, consent of flag State, immunities, and other matters

Offences

34 Threatening, obstructing, or failing to comply with enforcement officer

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

(a) threatens or intentionally obstructs an enforcement officer in the execution of the enforcement officer's powers under Part 2; or

(b) fails without reasonable excuse to comply with a requirement imposed by an enforcement officer under Part 2.

(2) A person who provides information in response to a requirement imposed by an enforcement officer under Part 2 commits an offence if—

(a) the information is false or misleading in any material respect and the person either knows it is or is reckless as to whether it is; or

(b) the person intentionally fails to disclose any material particular.

(3) A person who commits an offence against subsection (1)(a) is liable on conviction to imprisonment for a term not exceeding 12 months.

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

(5) A person who commits an offence against subsection (2) is liable on conviction to imprisonment for a term not exceeding 6 months.

(6) An enforcement officer may exercise powers under Part 2 in respect of a person who the enforcement officer has reasonable grounds to suspect has committed an offence against this section.

35 Application and further provision regarding offence

(1) Section 34 applies—

(a) whether or not the act or omission constituting the offence occurred in or outside New Zealand; and

(b) regardless of whether the person is a New Zealand citizen or ordinarily resident in New Zealand or the act or omission was done on a New Zealand ship.

(2) Nothing in section 8 of the Crimes Act 1961 (which relates to jurisdiction in respect of crimes on ships and aircraft beyond New Zealand) applies with respect to any proceedings brought under section 34.

36 Consent of Attorney-General to prosecution

(1) No proceedings for the trial and punishment of a person charged with an offence against section 34 can be instituted in any court except with the consent of the Attorney-General.

(2) However, a person charged with an offence against section 34 may be arrested or a warrant for that person's arrest may be issued and executed, and that person may be remanded in custody or on bail, even though the Attorney-General's consent under subsection (1) has not been obtained.

Obtaining consent of flag State or other State or relevant territory

37 Secretary of Foreign Affairs and Trade responsible for seeking consent

(1) An enforcement officer must seek the authorisation of the Secretary of Foreign Affairs and Trade before powers are exercised under Part 2 if—

(a) the consent of a flag State is required under section 12 for the exercise of powers in relation to a foreign ship; or

(b) the consent of a coastal State is required under section 14 for the exercise of powers in foreign waters.

(2) The Secretary of Foreign Affairs and Trade is responsible for seeking any consent referred to in subsection (1)(a) or (b).

(3) The Secretary of Foreign Affairs and Trade may disclose personal information to the flag State if the Secretary of Foreign Affairs and Trade is satisfied that it is reasonably necessary for the purpose of enabling the flag State to deal with the request for consent.

(4) A certificate given by the Secretary of Foreign Affairs and Trade of the terms of an authorisation referred to in subsection (1) is conclusive evidence for all purposes of the matters stated in it.

Immunities

38 Immunities

(1) A person is immune from civil and criminal liability for good faith actions or omissions in pursuance or intended pursuance of the person's duties, functions, or powers under this Act if—

(a) the actions or omissions are reasonable; and

(b) the person believes on reasonable grounds that the preconditions for the performance or exercise of the duty, function, or power have been satisfied.

(2) A person is immune from civil and criminal liability for good faith and reasonable actions or omissions to assist another with the other's pursuance or intended pursuance of duties, functions, or powers under this Act.

(3) In any civil proceeding in which a person asserts that they have an immunity under this section, the onus is on them to prove those facts necessary to establish the basis of the claim.

Compare: 2012 No 24 s 166

39 Immunity of the Crown

(1) If a person is immune from civil liability under section 38 in respect of anything done or omitted to be done, the Crown is also immune from civil liability in tort in respect of that person's conduct.

(2) For the purposes of this section, the **Crown** includes Crown entities.

Compare: 2012 No 24 s 167

40 No entitlement to compensation

No compensation is payable to the owner of a ship or any other person for the cost (for fuel or other provisions) of complying with a lawful direction under section 23.

Application of presence requirement to person arriving in New Zealand after powers exercised under this Act

41 Application of presence requirement to person arriving in New Zealand after powers exercised under this Act

For the purpose of any proceedings for an offence against a person who is in New Zealand, a presence requirement may be satisfied in respect of the person even though the person was brought to New Zealand on a ship detained under this Act or in the course of any other action taken under this Act.

Disclosure of personal information by enforcement officer

42 Disclosure of personal information by enforcement officer

An enforcement officer may disclose personal information obtained in the exercise of powers under this Act to a public sector agency in New Zealand as if the information had been obtained in New Zealand by the officer in the capacity in which the officer is included in the definition of enforcement officer in section 4.

Forfeiture of ship in certain cases

43 Forfeiture of ship in certain cases

(1) A ship is forfeited to the Crown if it arrives in New Zealand under a direction given under section 23(2)(b)(i) and any of the following apply:

(a) a drugs smuggling offence has been, or is being, committed on the ship:

(b) the ship has been, or is, otherwise involved in the commission, or in facilitating the commission, of a drugs smuggling offence:

(c) any of the following offences has been or is being committed on the ship:

(i) an offence against sections 92 to 97 of the Crimes Act 1961 (which relate to piracy):

(ii) an offence against section 98 of the Crimes Act 1961 (which relates to dealing in slaves):

(iii) an offence against section 98AA of the Crimes Act 1961 (which relates to dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour):

(iv) any offence against sections 98B to 98F of the Crimes Act 1961 (which relate to smuggling and trafficking in people):

(d) an offence relating to the unlawful importation of goods into New Zealand has been, or is being committed on the ship.

(2) If a ship is treated as forfeited under this section, sections 176(3) and 177 to 189 of the Customs and Excise Act 2018 apply as if the forfeiture arose under that Act.

(3) In this section, **drugs smuggling offence** means an offence—

(a) under section 6(2) or (2A) of the Misuse of Drugs Act 1975 in relation to a contravention of, or a conspiracy to contravene, section 6(1)(a) of that Act; or

(b) under section 12AB(1) of the Misuse of Drugs Act 1975; or

(c) under section 12C of the Misuse of Drugs Act 1975 in relation to an act or omission that would be an offence—

(i) under section 6(2) or (2A) of the Misuse of Drugs Act 1975 in relation to a contravention of, or a conspiracy to contravene, section 6(1)(a) of that Act; or

(ii) under section 12AB(1) of the Misuse of Drugs Act 1975; or

(d) under section 12E or 12F of the Misuse of Drugs Act 1975.

Reporting of exercise of powers under this Act

44 Reporting of exercise of powers under this Act

(1) An enforcement officer who exercises any power under this Act must provide a written report on the exercise of that power as soon as practicable after the exercise of the power.

(2) The report must be made,—

(a) if the enforcement officer is a constable, to the Commissioner of Police or a Police employee designated to receive reports of that kind by the Commissioner; and

(b) if the enforcement officer is other than a constable, to a person designated by the relevant person described in subsection (5) to receive reports of that kind from the enforcement officer; and

(c) to the Secretary of Foreign Affairs and Trade.

(3) The report must—

(a) contain a short summary of the circumstances of the exercise of the power, and the reason or reasons why the power needed to be exercised; and

(b) state whether any evidential material was seized or obtained as a result of the exercise of the power; and

(c) state whether any criminal proceedings have been brought or are being considered as a consequence of the seizure of that evidential material.

(4) This section does not require a report in respect of a rub-down search of a person under section 85 or 88 of the Search and Surveillance Act 2012 (as applied

by section 27 of this Act) that is undertaken in conjunction with that person's arrest or detention under this Act.

(5) For the purpose of subsection (2)(b), the **relevant person** is—

(a) the chief executive of the New Zealand Customs Service (if the enforcement officer is a Customs officer):

(b) the Chief of Defence Force (if the enforcement officer is a member of the Armed Forces):

(c) the chief executive of the Department of Conservation (if the enforcement officer is a person described in any of paragraphs (d) to (f) of the definition of enforcement officer in section 4(1)).

Compare: 2012 No 24 s 169

45 Reporting of exercise of powers to flag State or coastal State

When reporting to a flag State or coastal State on the exercise of powers under this Act, the Secretary of Foreign Affairs and Trade may disclose personal information if satisfied that it is reasonably necessary for the purpose of complying with any of New Zealand's international obligations.

Application to Tokelau

46 Application to Tokelau

(1) This Act is in force in Tokelau for the purpose of the offences in sections 4 to 6 of the Maritime Crimes Act 1999.

(2) In the application of this Act to Tokelau, unless the context otherwise requires,—

(a) a reference in this Act to New Zealand (when used as a territorial description) is a reference to Tokelau:

(b) a reference to New Zealand's internal waters, territorial sea, or exclusive economic zone is a reference to Tokelau's internal waters, territorial sea, or exclusive economic zone within the meaning of the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977.

Amendment to Arms Act 1983

47 Principal Act

Section 48 amends the Arms Act 1983.

48 Section 3 amended (Act to bind the Crown)

After section 3(2)(ab), insert:

(ac) by a member of the New Zealand Defence Force or a constable who is an enforcement officer as defined in section 4(1) of the

Maritime Powers Act 2022 in the course of exercising any power or performing any function under that Act:

Amendments to Customs and Excise Act 2018

49 Principal Act

Sections 50 to 52 amend the Customs and Excise Act 2018.

50 Section 4 amended (Overview of Act)

In section 4(5), delete "(including Schedule 5A)".

51 Section 176 amended (Goods forfeited)

Repeal section 176(1)(v).

52 Repeal of section 267A and Schedule 5A (Powers for dealing with drugs smuggling outside New Zealand, etc)

(1) Repeal section 267A.

(2) Repeal Schedule 5A.

Amendment to Fisheries Act 1996

53 Principal Act

Section 54 amends the Fisheries Act 1996.

54 Section 215 amended (General powers)

After section 215(3), insert:

(4) In this section, **freshly pursued** has the same meaning as **pursued without interruption** in section 6 of the Maritime Powers Act 2022, and **fresh pursuit** has a corresponding meaning.

Amendments to Maritime Crimes Act 1999

55 Principal Act

Sections 56 and 57 amend the Maritime Crimes Act 1999.

56 Section 2 amended (Interpretation)

In section 2, repeal the definition of **enforcement officer**.

57 Repeal of heading and sections 10A to 10G

Repeal sections 10A to 10G and the cross-heading above section 10A.

Amendment to Search and Surveillance Act 2012

58 Principal Act

Section 59 amends the Search and Surveillance Act 2012.

59 Schedule amended (Powers in other enactments to which all or part of Part 4 of Search and Surveillance Act 2012 applies)

In the Schedule, insert in its appropriate alphabetical order the item set out in Schedule 2 of this Act.

Schedule 1
Transitional, savings, and related provisions

s 7

Part 1
Provisions relating to this Act as enacted

1 Exercise of powers in progress under repealed enforcement provisions in Customs and Excise Act 2018 or Maritime Crimes Act 1999

(1) In this clause, **relevant regime** means—

(a) Schedule 5A of the Customs and Excise Act 2018; or

(b) sections 10A to 10G of the Maritime Crimes Act 1999.

(2) Subclause (3) applies if a power under a relevant regime has been exercised before the commencement of this Act in respect of a person or ship (whether or not the exercise of the power is completed before that date).

(3) The relevant regime continues to apply as if this Act had not been enacted in relation to—

(a) the completion of the exercise of a power referred to in subclause (2); and

(b) the exercise of any other power in the relevant regime in relation to that person or ship; and

(c) the completion of any matter arising from the exercise of any of those powers.

Schedule 2
Amendment to Search and Surveillance Act 2012

s 59

Maritime Powers Act 2022	20	Searching	Subparts 1 and 4 (except section 121) and subparts 5 and 6 (except section 160)

Legislative history

23 June 2021	Introduction (Bill 48–1)
6 July 2021	First reading and referral to Foreign Affairs, Defence and Trade Committee
8 November 2021	Reported from Foreign Affairs, Defence and Trade Committee (Bill 48–2)
1 March 2022	Second reading
11 May 2022	Committee of the whole House
17 May 2022	Third reading
20 May 2022	Royal assent

This Act is administered by the Ministry of Foreign Affairs and Trade and the Ministry of Justice.

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