

Russia Sanctions Bill

Government Bill

Explanatory note

General policy statement

The Russia Sanctions Bill establishes a framework for implementing sanctions by New Zealand in response to the aggressive acts and other breaches of international law by the Russian Federation (**Russia**), in particular, its illegal invasion of Ukraine, and violations of Ukraine's sovereignty and territorial integrity.

The Bill allows for sanctions to be imposed and enforced on individuals or entities that are responsible for, associated with, or involved in actions that undermine the sovereignty or territorial integrity of Ukraine or that are of economic or strategic relevance to Russia.

It will prevent individuals or entities from moving assets to New Zealand or using New Zealand's financial system to circumvent sanctions that may be imposed by other countries in the future. It will also enable New Zealand to freeze assets already located here.

The Bill also allows sanctions to be imposed and enforced on designated assets or services (such as trade and financial services). Sanctions could also restrict access to New Zealand territory.

The New Zealand Government continues to register its condemnation, in the strongest possible terms, of Russia's invasion of Ukraine. Russia has shown a flagrant disregard for, and breached, international law's most fundamental norms, abdicated its responsibility to uphold global peace and security, and ignored the international community's outrage at its behaviour. In this context, New Zealand has been consistent in supporting Ukraine's sovereignty and territorial integrity.

As a small country that depends on the international rules-based system for security and prosperity, New Zealand supports the sovereign right of states to determine their own future, including their security relationships. New Zealand upholds international law, and supports respect for it. Regrettably, Russia has used its veto, as a permanent

member of the United Nations Security Council (the **Security Council**), to prevent any action, including sanctions, at the multilateral level.

In an emergency session of the United Nations General Assembly on 2 March 2022, New Zealand, along with 140 other United Nations member states, voted for the resolution “Aggression Against Ukraine”. Only 5 states voted against the resolution. This is the first time in 40 years that the United Nations Security Council has referred such a crisis to the United Nations General Assembly and only the 11th time an emergency session of the General Assembly has been called since 1950. This referral, known as a Uniting for Peace resolution, can only occur in circumstances where the United Nations Security Council fails to exercise its primary responsibility to act as required to maintain international peace and security (because, as in this case, Russia has abused its veto power).

In further condemnation of Russia’s actions, on 2 March 2022, New Zealand joined a group of 39 States Parties to the Rome Statute formally referring the situation in Ukraine to the Prosecutor of the International Criminal Court. The prosecutor will now investigate the situation and identify whether any acts of war crimes, crimes against humanity, or genocide appear to have occurred on the territory of Ukraine by any person.

The Bill ensures that, despite the members of the United Nations Security Council being unwilling to act, New Zealand’s condemnation of Russia’s illegal actions will be expressed through practical legislative changes. The changes will prohibit or restrict activity inside and outside New Zealand by individuals or entities responsible for, associated with, or involved in this invasion. Given the fluid situation in Ukraine, and the international community’s rapidly evolving response, the Bill will ensure that New Zealand has the legislative tools to take further measures to respond to Russia’s illegal aggression. Having the ability to implement additional response measures will ensure that New Zealand can contribute to the collective actions of the international community to respond to Russia’s actions.

The Bill responds to illegal Russian aggression against the sovereignty and territorial integrity of Ukraine. All States have obligations at international law not to render aid or assistance to those committing illegal acts. Where there is evidence that another State is providing such illegal aid or assistance to Russian aggression—for example, the actions of Belarus in allowing its territory to be used by Russian forces—the Bill allows relevant individuals and entities from that State to be subject to sanctions. Correspondingly, the Bill also provides the ability to apply further sanctions against Russia if it threatens the sovereignty or territorial integrity of other neighbouring States.

As an act of aggression is considered to be a fundamental breach of international law, all States are legally required to co-operate to bring the aggression to an end, using any lawful measures available.

Sanctions enabled by the Bill reinforce those imposed by the international community and would provide the ability to respond, as appropriate, to threats to the sovereignty and territorial integrity of Ukraine or another country.

The framework that the Bill establishes will allow sanctions to be made by regulations in clearly defined circumstances. The Minister of Foreign Affairs must be satisfied, before recommending the making of regulations to impose sanctions, that the regulations are appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine.

Regulations will set out the specific prohibitions and restrictions that apply to the classes of persons, assets, or services concerned. The Bill authorises the Secretary of Foreign Affairs and Trade to issue designation notices that give further details of the particular persons, assets, or services subject to the sanctions. A public sanctions register will be established to list all individuals, entities, assets, or services sanctioned under the Bill.

The framework is designed to provide the flexibility to tailor sanctions to the rapidly changing situation in Ukraine and to enable the Government to take action in a timely way. The Bill incorporates provisions to ensure that sanctions are transparent, able to be reviewed and revoked, are temporary rather than permanent, and are 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 all reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to report to the Commissioner of Police when they suspect they possess assets or are dealing with services that are subject to sanctions. This will facilitate the monitoring and enforcement of any restrictions imposed under the 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.

The Bill enables government agencies to share information with the Secretary of Foreign Affairs and Trade to support the making, and enforcement, of the sanctions.

Enforcement action can be taken against individuals or entities who fail to comply with sanctions, in the form of civil penalties, criminal fines, or imprisonment.

Where designated individuals (other than New Zealand citizens or permanent residents) are already in New Zealand at the time of designation, the Bill allows the sanctions regulations to prohibit or restrict them from remaining in New Zealand, and links to the deportation provisions of the Immigration Act 2009.

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. It 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=2022&no=111>

Regulatory impact statement

Because this Bill is urgently required, a regulatory impact statement has not been completed.

The Treasury and the Ministry of Foreign Affairs and Trade have agreed that a post-implementation review will be completed after the passage of this Bill.

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

Preliminary provisions

Clause 3 sets out the purpose of the Bill. The purpose is to enable the New Zealand Government to impose and enforce sanctions in response to military actions by Russia (and by countries or persons who may be assisting Russia).

Sanctions may relate to military actions in Ukraine or in any other country.

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

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

Clause 4 provides for the application of the Bill. The Bill empowers regulations that may apply in certain circumstances to action outside New Zealand by New Zealand citizens and companies, people who are ordinarily resident in New Zealand, and dealings on New Zealand ships or aircraft. *Clause 4* provides a signpost to where the Bill's extraterritorial application is covered further (*clause 26*).

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. Some explicit inclusions are spelt out, which do not limit the 2 basic definitions. 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. It includes services that facilitate, or are provided in relation to, any activity.

For example, regulations made under the Bill could sanction military activities, but build in exceptions to allow for military activities in and around Ukraine that are by peacekeeping or other security or police personnel acting on behalf of the New Zealand Government or a partner Government or organisation.

An example of an asset might be computer code or other data. A related example of a service might be coding. Examples of services provided in the Bill's definition include—

- advice, assistance, or training:
- electronic services (for example, relating to information technology):
- communications services:
- bunkering services:
- carriage services:
- financial, accounting, and insurance services (including for example, a service relating to cryptocurrency):
- military activities.

Dealing with assets and dealing with services are also defined widely. Dealing with assets means using, receiving, providing, or otherwise exchanging, trading, or controlling assets in any way and by any means (whether commercially or not). Dealing with services means using, receiving, providing, or otherwise exchanging, trading, or controlling services in any way and by any means (whether commercially or not). Both definitions indicate inclusions that do not limit the basic definition.

The breadth of the definitions allows sanctions restricting or prohibiting certain aircraft or ships (assets) from entering New Zealand waters.

The definition of entity is wide enough to cover persons or bodies performing a public function, duty, or power for Russia or an assisting country. Examples might include State military institutions or hacking organisations working on behalf of, or supporting, Russia. The definition of entity also includes an organisation or association set up for a political purpose. Examples might be bodies known as the Donbass People's Militia, the Donetsk People's Republic, the Oplot Battalion, the Federal State of Novorossiia, and Peace to the Luhansk Region.

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

Part 2

Sanctions

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 do so only if the Minister is satisfied that the regulations are necessary to respond to threats to the sovereignty or territorial integrity of Ukraine or another country.

A response is appropriate if the Minister considers it demonstrates New Zealand's condemnation of the threat, including—

- if it is designed to exert pressure on Russia (or an assisting country); or
- because it complements or reinforces sanctions by other countries.

The pressure could be exerted by interrupting economic relations, which is something referred to in Article 41 of the United Nations Charter. Article 41 allows for sanctions imposed by the United Nations to cause the—

“...complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

Additionally, the Minister must be satisfied that the United Nations Security Council is unlikely to act or has acted (or is likely to act) insufficiently.

Clause 9 is the key regulation empowering provision. Regulations that prescribe a sanction must include—

- a statement of the purpose of the regulations:
- a description of the persons or class of persons, assets or class of assets, or services or class of services affected:
- a description of the relevant prohibitions or restrictions:
- a description of any duties or requirements in relation to compliance with the sanction.

Other limits on the power to make regulations that prescribe a sanction are provided in *clauses 10 and 11*. For example,—

- 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 about the scope and effect of sanctions regulations. *Clause 10(1)* allows the regulations to be of general application or to relate only to specified countries. *Clause 10(2)* provides that regulations in relation to a designated person may cover their associates (including their relatives). *Clause 10(5)* provides for the regulations to set out how assets may be preserved or managed during the time they are prohibited or restricted. The regulations may also provide that the owner can be charged for that preservation or management. *Clause 10(6)* allows sanctions relating to dealing with assets or dealing with services to modify (with or without conditions), extend, disapply, exempt, or suspend any specified rule in any other legislation.

Clause 11 enables the Secretary to further identify persons, assets, or services described in sanctions regulations. This may be done by a designation notice. 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.

Clause 12 provides for regulations and designation notices to have a fixed term (unless extended under that clause).

Clause 13 provides for the ability to challenge or alleviate the effects of a sanction. Those affected are able to apply and ask the Minister to change the sanction.

Clause 13 also allows those affected to seek an exemption for a particular specified situation, in relation to particular persons, assets, or services and for particular events or dealings. An application may be made because of humanitarian need or for any other reason.

Clause 14 requires the Secretary of Foreign Affairs and Trade to maintain an online register listing all current sanctions and exemptions from sanctions.

Clause 15 requires duty holders (such as registered banks and certain others) 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 those that are to deal with or that are dealing with services that they suspect are designated services.

Regulations made under *clause 32* may extend this obligation onto other duty holders for the purposes of the Bill.

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.

Part 3

Enforcement

Clause 18 prohibits contracting out of the Bill.

Clause 19 provides that no person is entitled to compensation or other remedy for good faith and reasonable actions or omissions by those acting under the Bill.

Civil enforcement

Clauses 20 to 23 create a civil liability regime for people who breach a 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 a 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 a sanction.

Criminal enforcement

Clause 24 sets out offences under the Bill.

It is an offence to knowingly or recklessly breach a sanction (without lawful justification or reasonable excuse) (*see clause 24(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, a sanction (*see clause 24(3)*).

The offences under *clause 24(1) and (3)* are punishable, for individuals, by imprisonment for a term not exceeding 7 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 24(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 24(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 24(8) provides that if it is necessary to establish the state of mind of an entity in proceedings for an offence, 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.

Clause 25 provides for an additional penalty if offending involved commercial gain. A court may order a convicted person to pay up to 3 times the value of any gain.

Extraterritorial application

Clause 26 sets out the extraterritorial jurisdiction for offences under the Bill. This is modelled on the precedent section of 7A of the Crimes Act 1961.

Attorney-General's consent

Clause 27 provides that the Attorney-General must consent to any prosecution under the Bill. This is the usual position for foreign affairs legislation.

Application of Customs and Excise Act 2018

Clause 28 provides that the provisions of the Customs and Excise Act 2018 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, a sanction. The

provisions apply as if the importation or exportation of the assets were prohibited under that Act.

Part 4

Review of Act and miscellaneous provisions

Review of Act

Clause 29 requires a review about the operation and effectiveness of the Act after 2 years. The Minister must present a report of the review to the House of Representatives.

Information gathering and sharing powers

Clause 30 provides powers for the Commissioner of Police to order documents to be produced. *Clause 30* is similar to the Commissioner of Police's powers in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Clause 31 provides that a government agency may disclose to the Secretary certain information if the agency considers that the disclosure is necessary or desirable for specified purposes relating to sanctions.

Other regulation-making powers

Clause 32 provides for other regulation-making powers.

Consequential amendments

Clause 33 consequentially amends the Companies Act 1993. This amendment has the effect that if the Registrar of Companies exercises the Registrar's powers to find out the beneficial owner of a company (which may be a foreign company), the Registrar can share that information with the Ministry of Foreign Affairs and Trade.

Clause 33 also makes other consequential amendments.

Hon Nanaia Mahuta

Russia Sanctions Bill

Government Bill

Contents

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

Russia Sanctions Bill

	<i>Duty to report suspicions</i>	
15	Duty to report suspicions	11
	<i>Protection for persons with obligation or duty imposed by or under this Act</i>	
16	Protection of identity of persons making reports	12
17	Protection for persons with obligation or duty imposed by or under this Act	13
	Part 3	
	Enforcement	
18	No contracting out	13
19	No entitlement to compensation	13
	<i>Civil enforcement</i>	
20	Civil enforcement	13
21	Enforceable undertakings	14
22	Enforcement of undertakings	14
23	Injunctions	14
	<i>Criminal enforcement</i>	
24	Offences	15
25	Additional penalty for offence involving commercial gain	16
	<i>Extraterritorial application</i>	
26	Extraterritorial jurisdiction for offences	16
	<i>Attorney-General's consent</i>	
27	Attorney-General's consent required	17
	<i>Application of Customs and Excise Act 2018</i>	
28	Application of Customs and Excise Act 2018	17
	Part 4	
	Review of Act and miscellaneous provisions	
	<i>Review of Act</i>	
29	Review of Act	18
	<i>Information gathering and sharing powers</i>	
30	Commissioner's powers	18
31	Power to use and disclose information supplied or obtained under other enactments for purposes of this Act	18
	<i>Other regulation-making powers</i>	
32	Other regulation-making powers	19
	<i>Consequential amendments</i>	
33	Anti-Money Laundering and Countering Financing of Terrorism Act 2009 amended	20

34	Companies Act 1993 amended	20
35	Tax Administration Act 1994 amended	21
	23A Government agencies: Russia sanctions purposes	21

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Russia Sanctions Act **2022**.

2 Commencement

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

Part 1
Preliminary provisions

3 Purpose

- (1) The purpose of this Act is to enable New Zealand to impose and enforce sanctions in response to military actions by Russia (and by countries or persons who may be assisting Russia). 10
- (2) The military actions began on 24 February 2022 in relation to Ukraine, but the sanctions may relate to military actions in Ukraine or in any other country.

4 Application of this Act 15

This Act empowers regulations that may apply in relation to—

- (a) persons travelling to, entering, or remaining in New Zealand; and
- (b) dealing with assets or dealing with services, including—
- (i) dealing inside New Zealand with assets outside New Zealand or with services to or for persons outside New Zealand; and 20
- (ii) dealing outside New Zealand by New Zealand citizens, ordinary residents, and entities (*see section 26*).

5 Interpretation

In this Act, unless the context otherwise requires,—

- asset**— 25
- (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
- (b) includes, without limitation,— 30

- (i) any legal or equitable estate or interest in property; and
- (ii) the proceeds of dealing with any asset

Example

Cryptocurrency is an example of an asset.

Commissioner means the Commissioner of Police	5
constable has the meaning given in section 4 of the Policing Act 2008	
court means the High Court	
craft includes any aircraft, ship, or other machine or vessel, used or capable of being used for the transportation of goods or persons by air or by water	
dealing with assets —	10
(a) means using, receiving, providing, or otherwise exchanging, trading, or controlling assets in any way and by any means (whether commercially or not); and	
(b) includes, without limitation,—	
(i) operating an asset (for example, operating a craft):	15
(ii) possessing or acquiring possession of assets:	
(iii) transferring, holding, lending, hiring, carrying, supplying, procuring, paying for, buying, selling, importing, exporting, assigning, sharing, gifting, or disposing of, or providing access to, assets:	
(iv) allowing or facilitating dealing with assets	20
dealing with services —	
(a) means using, receiving, providing, or otherwise exchanging, trading, or controlling services in any way and by any means (whether commercially or not); and	
(b) includes, without limitation,—	25
(i) supplying, brokering, arranging, procuring, paying for, buying, selling, gifting, or transferring services:	
(ii) disrupting, intercepting, or disabling services, or interfering with services:	
(iii) allowing or facilitating dealing with services	30
designated asset means an asset to which a sanction applies because the asset is described in or under, or is within a class of assets described in or under, regulations made under section 9	
designated person means a person to whom a sanction applies because the person is described in or under, or is within a class of persons described in or under, regulations made under section 9	35

designated service means a service to which a sanction applies because the service is described in or under, or is within a class of services described in or under, regulations made under section 9	
designation notice means a notice given under section 11	
duty holder means—	5
(a) a reporting entity within the meaning given in section 5(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009:	
(b) a person who is declared by regulations made under section 32 to be a duty holder	
entity means any of the following:	10
(a) a company or other body corporate:	
(b) a corporation sole:	
(c) in relation to a trust,—	
(i) if the trust has only 1 trustee, the trustee acting in the person's capacity as trustee:	15
(ii) if the trust has more than 1 trustee, the trustees acting jointly in their capacity as trustees:	
(d) an unincorporated body (including a partnership):	
(e) an organisation or association set up for a political purpose:	
(f) a person or body that performs or exercises a public function, duty, or power conferred on that person or body by Russia or by another country who may be assisting Russia (including, for example, military or information technology functions, duties, or powers)	20
government agency has the meaning given in section 5(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009	25
Ministry means the Ministry of Foreign Affairs and Trade	
New Zealand citizen has the meaning given in section 4 of the Immigration Act 2009	
person means—	
(a) an individual; or	30
(b) an entity	
prescribed means prescribed in or under regulations made under this Act	
privileged communication has the meaning given in section 42 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009	
Russia means the Russian Federation (Rossiyskaya Federatsiya)	35
sanction has the meaning given in section 6	
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) an electronic service (for example, relating to information technology):
 - (iii) a communications service:
 - (iv) a bunkering service:
 - (v) a carriage service: 10
 - (vi) a financial, accounting, or insurance service (including for example, a service relating to cryptocurrency):
 - (vii) a military activity:
 - (viii) a service that facilitates, or is provided in relation to, any activity.
- 6 Meaning of sanction** 15
- In this Act, **sanction** means a prohibition or restriction imposed by or under regulations made under **section 9** in relation to—
- (a) persons travelling to, entering, or remaining in New Zealand; or
 - (b) dealing with assets; or
 - (c) dealing with services. 20
- 7 Act binds the Crown**
- This Act binds the Crown.

Part 2 Sanctions

- 8 Threshold for recommending sanction** 25
- Responding to threats to sovereignty or territorial integrity of Ukraine or another country*
- (1) The Minister may recommend that regulations be made under **section 9** only if the Minister is satisfied that the regulations are appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine or another country. 30

Example

Examples of a response are—

- sanctioning persons responsible for, or associated with, the threats; or
- sanctioning persons, assets, or services involved (or that may be involved) in the threats; or 5
- sanctioning persons, assets, or services that will have, currently have, or have had some economic or strategic relevance or connection to a country making the threats; or
- sanctioning persons from, or assets or services to or from, a country making the threats. 10

- (2) A response is appropriate if the Minister considers it demonstrates New Zealand's condemnation of the threat, including by either or both of the following:
- (a) being designed to exert pressure on Russia (or a country who may be assisting Russia) including by interrupting economic relations; or
 - (b) because it complements or reinforces sanctions by other countries. 15

Absence of sufficient United Nations Security Council action

- (3) The Minister must also be satisfied that the United Nations Security Council—
- (a) is unlikely to act in response to the threat under Chapter VII 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 20
 - (b) has acted (or is likely to act) in response to the threat under Chapter VII, but the action is (or may be) insufficient.

Regulations and designation notices

9 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations imposing sanctions. 25
- (2) The regulations must —
- (a) include a statement of their purpose; and
 - (b) describe any of the following, or any classes of the following, to which the regulations apply: 30
 - (i) persons:
 - (ii) assets:
 - (iii) services; and
 - (c) set out the prohibitions or restrictions imposed on or in relation to—
 - (i) designated persons, which may be,— 35
 - (A) in the case of individuals who are not New Zealand citizens or holders of a residence class visa, prohibitions or restric-

- tions on travelling to or entering New Zealand or prohibitions or restrictions on remaining in New Zealand; or
- (B) prohibitions or restrictions on or in relation to dealing with specified assets by, with, for, or from designated persons; or
- (C) prohibitions or restrictions on or in relation to dealing with specified services by, with, for, or from designated persons; and 5
- (ii) specified dealing with designated assets; and
- (iii) specified dealing with designated services; and
- (d) set out any duties or requirements in relation to compliance with the sanction (for example, a duty to register with the Ministry before engaging in dealings that are, or may be, dealings to which the sanction applies). 10
- (3) In this section, **holder** and **residence class visa** have the same meanings as in section 4 of the Immigration Act 2009. 15
- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 10 Scope and effect of regulations made under section 9**
- (1) Regulations may apply generally or only in relation to a specified country or specified countries. 20
- (2) Regulations in relation to a designated person may also describe a class of persons who are associates of, or relatives of, the designated persons (**associates**) and apply to those associates as if they were designated persons.
- (3) Regulations that prohibit or restrict a designated person from travelling to or entering New Zealand are an exclusion for the purposes of section 15(1)(e) of the Immigration Act 2009. 25
- (4) Regulations that prohibit a designated person from remaining in New Zealand—
- (a) make the person liable for deportation under section 157 of the Immigration Act 2009; and 30
- (b) are a sufficient reason for the purposes of section 157(1) of that Act; and
- (c) mean that a deportation liability notice must be served on the person under section 170 of that Act; and
- (d) mean that section 157(2) of that Act does not apply to the person; and
- (e) for the purposes of Parts 6 and 9 of that Act, mean that the liability for deportation and the reason for any detention and monitoring arise under that Act. 35
- (5) Regulations that prohibit or restrict dealing with assets may—

-
- (a) set out how the assets may or must be held or managed during the time they are prohibited or restricted; and
- (b) provide that the costs of this be charged to the owner.
- (6) Regulations may, in relation to any specified provision in any other legislation,— 5
- (a) modify it and apply the modifications (with or without conditions); or
- (b) extend it; or
- (c) disapply it, with or without modifications or replacement; or
- (d) exempt any person from it; or
- (e) suspend it. 10
- 11 Designation notice identifying persons, assets, or services described in regulations**
- (1) If desirable to assist the users of regulations made under **section 9**, the Secretary may give (as provided in **subsection (2)**) further details of who or what is covered by a description in the regulations. 15
- (2) The Secretary may, by notice, in relation to a description, designate—
- (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 20
- (c) a service meeting that description, or within the class described, as a designated service.
- (3) The Secretary must not give a designation notice unless the Secretary is satisfied that the notice—
- (a) identifies persons, assets, or services in a way that is consistent with the description in regulations made under **section 9**; and 25
- (b) is required for the purpose of the regulations.
- (4) A designation notice given under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 12 Regulations and designation notices to have fixed term unless extended** 30
- (1) Regulations and designation notices must include a date on which they are revoked, and that date must be the earliest of—
- (a) the close of the day that is 3 years after the date on which the regulations or notice came into force; and
- (b) a date specified in the regulations or notice. 35
- (2) A designation notice is revoked on the date on which the regulation to which it relates is revoked.

- (3) However, despite **subsection (1)**, on or before the revocation date, that date may be extended (by amending it in the regulations or notice) 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: 5
 - (b) in relation to a designation notice, the Secretary 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 10
 - (ii) is still required for the purpose of the regulations.
- (4) The extended revocation date must be the earliest of—
- (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 15
 - (c) in the case of a notice, the date on which the regulation to which it relates is revoked.

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— 20
- (a) that the Minister recommend the amendment or revocation of a regulation made under **section 9**; or
 - (b) that the Minister ask the Secretary to amend or revoke a designation notice; or 25
 - (c) an exemption from a sanction for a particular specified situation, in relation to—
 - (i) particular persons, assets, or services; and
 - (ii) particular events or dealings in relation to those persons, assets, or services. 30
- (2) An application must—
- (a) be in writing; and
 - (b) include the applicant’s contact details; and
 - (c) set out the circumstances relied on by the applicant to justify the revocation, amendment, or exemption. 35
- (3) The Minister must decide the application in a way that is consistent with the purpose of the regulations providing for the 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.
- (5) 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 substantially the same matter within 6 months preceding the application. 5

Sanctions register

14 Sanctions register

- (1) The Secretary must maintain a register that lists all current sanctions under this Act, including— 10
- (a) descriptions of any designated person, designated asset, and designated service (or any classes of those things), and of any prohibited or restricted dealings; and
- (b) exemptions granted under **section 13**.
- (2) The Secretary must publish the register on an Internet site maintained by, or on behalf of, the Ministry. 15
- (3) Any failure to comply with this section does not invalidate the sanction or exemption involved.

Duty to report suspicions

15 Duty to report suspicions 20

- (1) A duty holder in possession or in immediate control of assets that the duty holder suspects on reasonable grounds are (or may be)—
- (a) designated assets; or
- (b) assets owned or controlled, directly or indirectly, by a designated person— 25
- must, as soon as practicable after forming that suspicion (but no later than 3 working days afterwards), report it to the Commissioner.
- (2) A duty holder that is to deal with or is dealing with services that the duty holder suspects on reasonable grounds are, or may be,—
- (a) designated services; or 30
- (b) services in relation to a designated person—
- must, as soon as practicable after forming that suspicion (but no later than 3 working days afterwards), report it to the Commissioner.
- (3) A report under **subsection (1) or (2)** must be provided in any prescribed manner and contain any prescribed details. 35
- (4) However, if the urgency of the situation requires, a report under **subsection (1) or (2)** may be made orally to a constable or an employee of the Police but,

in that case, the duty holder must, as soon as practicable (but no later than 3 working days afterwards), provide the Commissioner with a report in any prescribed manner that contains any prescribed details.

- (5) The Commissioner—
- (a) must disclose any information reported under this section to the Ministry; and 5
 - (b) may disclose any information reported under this section to any government agency for the purposes of this Act and regulations made under it if satisfied that the agency has a proper interest in receiving the information. 10
- (6) Nothing in this section requires a lawyer to disclose any privileged communication. 10

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

- 16 Protection of identity of persons making reports** 15
- (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—
 - (i) as a person who, in the person's capacity as a worker or agent of a duty holder, has been involved with assets or services that were the subject of a report under **section 15**; or 20
 - (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**. 25
- (2) The Commissioner, constables, and employees of the Police or the Ministry must not disclose any information to which this section applies except for the purposes of the enforcement of this Act or any regulations made under this Act, or for the purposes of the detection, investigation, or prosecution of an offence against **section 24**. 30
- (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 the person presiding at the proceeding is satisfied that the disclosure of the information is necessary in the interests of justice. 35

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

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— 5

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

**Part 3
Enforcement**

18 No contracting out 10

- (1) A sanction applies despite any contract or other agreement.
- (2) A provision in a contract or other agreement has no effect if it apparently requires a person to do either or both of the following:
 - (a) deal with assets or deal with services in a way that breaches a sanction:
 - (b) not make a report under **section 15** or withdraw a report. 15

19 No entitlement to compensation

No person is entitled to compensation or any other remedy for good faith and reasonable actions or omissions by the Minister, the Secretary, the Commissioner, constables, or others acting in pursuance or intended pursuance of their duties, functions, or powers under this Act. 20

Civil enforcement

20 Civil enforcement

- (1) This section and **section 21** apply to a person if the Attorney-General—
 - (a) considers that the person, without lawful justification or reasonable excuse, has breached a sanction; or 25
 - (b) considers that the person is likely to breach a sanction.
- (2) The Attorney-General may—
 - (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 21**: 30
 - (c) seek an order under **section 22** against the person for breach of an enforceable undertaking:
 - (d) seek an injunction under **section 23** against the person.

Compare: 2009 No 35 ss 78, 79

21 Enforceable undertakings

- (1) The Attorney-General may accept a written undertaking given by a person in connection with the person's compliance with a 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

22 Enforcement of undertakings

- (1) If the Attorney-General considers that a person who gave an undertaking that has been accepted under **section 21** has breached it, 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 an 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

23 Injunctions

- (1) After an application by the Attorney-General, the court may grant an injunction restraining a person from breaching a 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) **Subsections (1) and (2)** apply whether or not the person—
 - (a) intends to engage again, or to continue to engage, in conduct that breaches a sanction:
 - (b) has previously engaged in such conduct.
- (4) The powers in this section do not limit any other powers of the court relating to the granting of injunctions. 35

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

*Criminal enforcement***24 Offences**

- (1) A person commits an offence if the person, without lawful justification or reasonable excuse, knowingly or recklessly breaches a 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 7 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 7 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.

25 Additional penalty for offence involving commercial gain

- (1) In addition to any penalty the court may impose under **section 24**, the court may, on convicting a person of an offence specified in that section, order the person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the court is satisfied that the offence was committed in the course of producing a commercial gain. 5
- (2) The value of any gain must be assessed by the court, and is recoverable in the same manner as a fine. 10

Compare: 1990 No 98 s 47

Extraterritorial application

26 Extraterritorial jurisdiction for offences

- (1) Even if the acts or omissions alleged to constitute an offence against **section 24** occurred wholly outside New Zealand, proceedings may be brought for an offence under that section— 15
- (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 20
- (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 25
 - (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. 30
- (2) The following sections of the Crimes Act 1961 do not apply in respect of an offence against **section 24**:
- (a) section 8 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand): 35
 - (b) section 400 (which requires the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft).

- (3) Nothing in this section limits the application of **section 24** 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 5
 - (ii) an event necessary to the completion of an offence; or
 - (c) the application of section 8A of the Crimes Act 1961.
- (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. 10
- Compare: 1961 No 43 s 7A; 2004 No 69 s 13

Attorney-General's consent

27 Attorney-General's consent required

- (1) No charging document may be filed against any person in relation to an offence against **section 24** unless the Attorney-General consents to the filing of the charging document. 15
- (2) Even if the consent of the Attorney-General has not yet been obtained under **subsection (1)**,—
- (a) a person alleged to have committed an offence may be arrested, or a warrant for their arrest may be issued and executed, and the person may be remanded in custody or on bail; but 20
 - (b) no further or other proceedings may be taken until the consent has been obtained.

Application of Customs and Excise Act 2018

28 Application of Customs and Excise Act 2018

- All the provisions of the Customs and Excise Act 2018 that apply with respect to prohibited imports or to prohibited exports (except sections 388 to 391 of that Act) apply with respect to assets that are subject to, or that otherwise relate to, a sanction— 25
- (a) as if the importation or exportation of the assets were prohibited by or under section 96 or 97 of that Act; and 30
 - (b) with any necessary modifications.

Compare: 1996 No 37 s 11

Part 4

Review of Act and miscellaneous provisions

Review of Act

29 Review of Act

- (1) The Minister must, as soon as practicable after the expiry of 2 years from the commencement of this Act,— 5
- (a) commence a review of the operation and effectiveness of the Act; and
 - (b) prepare a report on that review.
- (2) The Minister must present the report to the House of Representatives as soon as practicable after it has been completed. 10

Information gathering and sharing powers

30 Commissioner's powers

- (1) The Commissioner may—
- (a) order any duty holder to produce, or provide access to, all records, documents, or information that are relevant to analysing or investigating information received by the Commissioner under this Act, with or without a court order; and 15
 - (b) share information and intelligence with government agencies for the purposes of this Act and regulations made under it.
- (2) Nothing in this section requires any person to disclose any privileged communication. 20

Compare: 2009 No 35 s 143

31 Power to use and disclose information supplied or obtained under other enactments for purposes of this Act

- (1) A government agency may disclose to the Secretary any information supplied or obtained under an enactment listed in **subsection (3)**, if the government agency considers that the disclosure of that information is necessary or desirable for any of the purposes described in **subsection (2)**. 25
- (2) The purposes are to enable the Secretary—
- (a) to advise the Minister about making (or considering whether to make, amend, or revoke) regulations: 30
 - (b) to advise the Minister about enforcing a sanction:
 - (c) to work with the Attorney-General or the Commissioner in relation to enforcing a sanction:
 - (d) to make a designation notice (or consider whether to make, amend, or revoke a designation notice): 35

- (e) to advise the Minister about an application under **section 13**:
- (f) to work with the Attorney-General or the Commissioner to ensure compliance with this Act and any regulations made under this Act.
- (3) The enactments referred to in **subsection (1)** are—
- (a) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009: 5
- (b) the Charities Act 2005:
- (c) the Companies Act 1993:
- (d) the Customs and Excise Act 2018:
- (e) the Customs and Excise Act 1996: 10
- (f) the Financial Markets Authority Act 2011:
- (g) the Financial Markets Conduct Act 2013:
- (h) the Financial Service Providers (Registration and Dispute Resolution) Act 2008:
- (i) the Financial Transactions Reporting Act 1996: 15
- (j) the Gambling Act 2003:
- (k) the Goods and Services Tax Act 1985:
- (l) the Income Tax Act 2007:
- (m) the Insurance (Prudential Supervision) Act 2010:
- (n) Parts 1 to 7 of the Intelligence and Security Act 2017: 20
- (o) the Non-bank Deposit Takers Act 2013:
- (p) the Overseas Investment Act 2005:
- (q) the Proceeds of Crime Act 1991:
- (r) the Racing Industry Act 2020:
- (s) the Real Estate Agents Act 2008: 25
- (t) the Reserve Bank of New Zealand Act 1989:
- (u) the Secondhand Dealers and Pawnbrokers Act 2004:
- (v) the Tax Administration Act 1994:
- (w) the Terrorism Suppression Act 2002:
- (x) any other Act prescribed by regulations made under this Act. 30

Compare: 2009 No 35 s 140

Other regulation-making powers

32 Other regulation-making powers

- (1) 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: 35

- (a) providing for anything this Act says may or must be provided for by regulations:
- (b) 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 sanctions, including the conditions applying to, the eligibility for, and the method of calculating the amount of, the compensation: 5
- (c) 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**, because the Minister, when recommending the regulations, considers such persons are likely to— 10
- (i) come into possession or immediate control of relevant assets; or
- (ii) provide relevant services:
- (d) prescribing the information to be included in a report required under **section 15** and the manner in which that report must be provided: 15
- (e) prescribing the information to be included in a formal warning issued under **section 20(2)(a)** and the manner in which that warning must be issued:
- (f) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act. 20
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Consequential amendments

- 33 Anti-Money Laundering and Countering Financing of Terrorism Act 2009 amended** 25
- (1) This section amends the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
- (2) In section 5(1), definition of **law enforcement purposes**, paragraph (b), after subparagraph (vi), insert: 30
- (vii) the Russia Sanctions Act **2022**:
- (3) In section 140(2), after paragraph (t), insert:
- (ta) the Russia Sanctions Act **2022**:
- (4) In section 142, after paragraph (ka), insert:
- (kb) co-operate with the Secretary of Foreign Affairs and Trade to implement and enforce the Russia Sanctions Act **2022**: 35
- 34 Companies Act 1993 amended**
- (1) This section amends the Companies Act 1993.

- (2) In section 366(1B), definition of **government agency**, after paragraph (f), insert:

(fa) the Ministry of Foreign Affairs and Trade:

- (3) In section 366(1B), definition of **law enforcement purposes**, after paragraph (e), insert:

(ea) the enforcement of the Russia Sanctions Act **2022**:

35 Tax Administration Act 1994 amended

- (1) This section amends the Tax Administration Act 1994.
 (2) In Schedule 7, Part C, after clause 23, insert—

23A Government agencies: Russia sanctions purposes

- (1) Section 18 does not prevent the Commissioner disclosing to the Ministry of Foreign Affairs and Trade or to another government agency information supplied or obtained under an Act referred to in **section 31** of the Russia Sanctions Act **2022** that is necessary or desirable for the purposes of that section.
 (2) In this clause, **government agency** has the meaning given in section 5(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.