

Departmental Disclosure Statement

Outer Space and High Altitude Activities Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

5 September 2016

Contents

Part One: General Policy Statement 3

Part Two: Background Material and Policy Information 5

Part Three: Testing of Legislative Content..... 8

Part Four: Significant Legislative Features 11

Part One: General Policy Statement

The Outer Space and High Altitude Activities Bill (the Bill) establishes a regulatory regime to govern space launches, including both launch vehicles and payloads (e.g. satellites), from New Zealand and by New Zealand nationals operating overseas. It also provides a legal framework for high altitude activities that originate from New Zealand.

The objectives of the Bill are to:

- Facilitate the development of a space industry and its safe and secure operation
- Implement certain international obligations New Zealand has relating to space activities and space technology
- Manage New Zealand's liability that arises from our obligations as a launching state
- Establish a system to control certain high altitude activities that take place from New Zealand
- Preserve New Zealand's national security and national interests

Facilitate the development of a space industry and its safe and secure operation

The Bill establishes a licensing regime for launches, launch facilities, and payloads which includes their ongoing operation over the life of the payload. Space activities create significant opportunities for economic development and innovation, but they also give rise to risks to public safety, national security and to the environment. International practice is to manage risk through a licensing regime (an overarching licence to launch and operate a space object with specific requirements implemented through licence conditions).

While a regulatory regime for space activities is necessary, highly prescriptive or onerous provisions in the legislation would have a deterrent effect on the development of a space industry. To avoid this, the Bill establishes a decision-making framework that will allow a risk-based approach with graduated requirements depending on the level of risk. The responsible Minister will be able to tailor the conditions of a licence or permit to take account of the particular circumstances and risks of the proposed activities.

The purposes of the Bill inform the matters that the responsible Minister must take into account when considering an application under the new regime. The primary purpose of the Bill is to facilitate the development of a space industry and its safe, secure and responsible operation. This purpose also informs the design of the Bill, which gives the responsible Minister broad discretion on the conditions of a licence or permit. An enabling regime provides the necessary flexibility to respond to rapidly evolving space technologies, space applications and related market demand.

International obligations

In order for space launches to take place from New Zealand, the Government has signed a Technology Safeguards Agreement with the United States (the TSA). The TSA enables the transfer, use and secure management of United States rocket technology to New Zealand.

The Government has also agreed to accede to the Convention on Registration of Objects Launched into Outer Space (the Registration Convention). The Registration Convention requires a State Party to establish a register of all objects sent into orbit or space. The Bill

contains a regulation-making power that will enable regulations that establish a register of space objects.

New Zealand is already a party to three other UN Space Treaties: the Outer Space Treaty (ratified in 1968), the Rescue Agreement (ratified in 1969), and the Liability Convention (ratified in 1974). Under the Liability Convention, launching states are absolutely liable to pay compensation for damage caused by their space objects on the surface of the Earth or to aircraft in flight. Liability for damage caused elsewhere (i.e. after the space object is launched into orbit) is fault-based. The Bill includes a provision that authorises the responsible Minister to require an indemnity against the Crown's liability and to set licence conditions that require the applicant to take out insurance for a specified amount.

High altitude activities

The Bill establishes a legal framework to govern high altitude activities that originate from New Zealand. This will future-proof the legislation for advances in technology and ensure that different technologies that perform similar functions are treated in a consistent manner. It will also ensure that New Zealand is well positioned to control high altitude activities that originate from New Zealand.

National security and national interests

The domestic regulation of space launches, payloads and high altitude activities is new to New Zealand and requires consideration of how best to manage the national security and national interest risks that may arise from these activities. The Bill establishes a model for managing national security risks comprising a consultation process (this is expected to be sufficient to manage most national security risks) and a certification process (which will act as a veto over the proposed activity in cases where a significant national security risk has been identified).

Enforcement

The Bill includes an offence and penalty regime with penalties aligned with comparable conduct under the Crimes Act 1961 and the Civil Aviation Act 1990. For serious licensing offences (such as launching or procuring the launch of a space object without a permit and/or intentionally failing to comply with the conditions of a permit) there is a power to arrest offenders and, if necessary, extradite them back to New Zealand from another country. Offences related to 'interference with space objects' are necessary to meet our obligations under the TSA and interference with the intention of use for commercial purposes are akin to the trade secrets offence under the Crimes Act. The Bill provides for the appointment of enforcement officers who will have information gathering and inspection powers.

Future proofing the regime

Space technologies are rapidly evolving. There are, for example, new hybrid vehicles that are both aircraft and space craft. To deal with these rapid advances in technology the Bill contains powers to make regulations prescribing things or classes of things that are or are not launch vehicles, payload, high altitude vehicles or launch facilities. This will 'future proof' the regime and allow for regulations that require only one licence where dual functions of a particular technology might otherwise require two. These regulation making powers are subject to significant safeguards including consultation requirements.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>General Assembly resolution 68/74 on recommendations on national legislation relevant to the peaceful exploration and use of outer space. http://www.unoosa.org/pdf/gares/A_RES_68_074E.pdf</p> <p>The Legal Framework of Activities in Outer Space – New Challenges in Times of Privatization and Commercialisation, Stanford Law School, 4 December 2014 http://law.stanford.edu/wp-content/uploads/sites/default/files/event/772928/media/slspublic/Irmgard%20Marboe%20-%20Space%20Law%20Talk%20at%20Stanford%20120414a.pdf</p> <p>Impact assessment for the review of the UK Outer Space Act 1986 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493187/OSA_Impact_Assessment_FINAL_BIS0067.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
<p>The Technology Safeguards Agreement between the United States and New Zealand Governments. https://www.parliament.nz/en/pb/sc/business-before-committees/document/00DBSCH_ITR_69357_1/international-treaty-examination-of-the-agreement-between</p> <p>The United Nations Registration Convention https://www.parliament.nz/resource/en-NZ/00DBSCH_ITR_69358_1/4b20c122ff11473de6bfa87beb42385dde6b83a6</p>	
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES

National Interest Analysis – Technology Safeguards Agreement (Ministry of Foreign Affairs and Trade, June 2016)

https://www.parliament.nz/resource/en-NZ/00DBSCH_ITR_69357_1/a547a574617eef61024ddd01b00c797a1f01229a

National Interest Analysis: United Nations Convention on Registration of Objects launched into outer space (Ministry of Business, Innovation and Employment, May 2016):

https://www.parliament.nz/resource/en-NZ/00DBSCH_ITR_69358_1/1d095d8ffe42d917ad47cc72c707750d1f3f7a47

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Regulatory Impact Statement: Outer Space and High Altitude Activities Bill (MBIE, May 2016) http://www.mbie.govt.nz/info-services/sectors-industries/space/pdf-library/RIS-Outter%20Space%20and%20High%20Altitude%20Activities%20Bill%20-June%202016.pdf	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
No independent opinion was given because the RIS did not meet the threshold for Treasury RIA Team assessment.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The RIS addresses the cost benefit analysis associated with the enabling legislation. A link to the RIS is provided in the response to question 2.3 above.</p> <p>An initial cost benefit analysis of the benefits of the development of a rocket launch industry in New Zealand was undertaken by Sapere Research Group to inform the development of the NIA for the Technology Safeguards Agreement (Refer question 2.2.1 above). A link to a public version of this report is:</p> <p>http://www.mbie.govt.nz/info-services/sectors-industries/space/pdf-library/Sapere%20Economic%20Impact%20Analysis%20of%20the%20Development%20of%20a%20Rocket%20Launch%20Industry%20-June%202016.pdf</p> <p>No analysis has been undertaken on (b) as it is not relevant to the policy intent of the Bill.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>(a) New Zealand has certain international obligations in relation to space activities and space technologies, including the TSA with the US Government. The Bill provides the mechanisms required to enable the government to comply with these obligations. The obligations in the TSA are of an absolute nature and non-compliance with these obligations would prejudice the ongoing operation of a space launch industry in New Zealand. This would curtail the economic, innovation and societal benefits of the policy.</p> <p>(b) A highly prescriptive regime or one that imposes overly onerous costs on the regulated activity would stifle the development of a New Zealand space industry. For this reason the Bill establishes an enabling regime. The regulatory agency and the regulatory systems and processes are still being developed. However, ensuring that a proportionate approach is taken to implementing the new regime is a key design principle.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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A detailed analysis of New Zealand's international obligations arising from the policy to be given effect by this Bill was undertaken as part of the regulatory impact analysis (and summarised in the RIS) and for the national interest analysis on the Technology Safeguards Agreement and Registration Convention.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

MBIE has identified the relevant principles as set out in the Legislative Design Committee guidelines and considered the extent to which the policy to be given effect by the Bill is consistent with the Crown's obligations under the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

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| (a) The relevant provisions relating to offences and penalties are in Subpart 4 – Offences (refer clauses 69 to 87).
(b) The Bill limits the ability of the courts to review the advice of security agencies that results in a certificate of risk to national security. However, it creates a new review procedure by the Inspector-General of Security Intelligence. The review procedure provides important safeguards in respect of the issuing of a national security certificate under clause 59 of the Bill. |
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3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

Issues raised in the consultation about the offences included the desirability for consistency with analogous domestic regimes, and proportionality between the level of harm and damage to property and public safety and the proposed offence. MBIE took care to ensure that the final proposals reflected the Ministry of Justice's advice and provided a clear rationale for any departure from that advice. The Ministry of Justice was also consulted on the regime in the Bill for dealing with national security information in court proceedings.
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
Clause 95 of the Bill amends the Privacy Act (Schedule 5) to enable the Minister responsible for the Outer Space and High Altitude Activities Act to access existing information held by the Police for the purposes of undertaking the fit and proper person test in clause 56 of the Bill.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>MBIE has undertaken targeted consultation on an exposure draft of the Bill to ensure that the Bill's provisions provide for regulatory efficiency and effectiveness whilst not imposing undue costs which could stifle the development of a space industry in New Zealand.</p> <p>The consultation was limited to entities carrying out space activities from New Zealand including entities who are directly impacted by the legislation because they or their members launch objects into outer space and/or near space (e.g. Rocket Lab, the Rocketry Association, NIWA, MetService, and the University of Canterbury); entities working in the satellite industry (e.g. two lead applicants for MBIE's proposed Regional Research Institutes: Bodeker Scientific and Earth+Vantage), and entities which deal with industry participants (Airways New Zealand).</p> <p>The consultation did not reveal any fundamental issues with the workability of the Bill. However, Airways has identified a number of issues related to the interface between the Civil Aviation regime and the Bill which will need to be dealt with to ensure the effectiveness of the overall regulatory approach. These issues can be addressed through regulations made under the Outer Space and High Altitude Activities and/or Civil Aviation Acts and/or operating procedures. However, should further analysis raise any legislative implications these can be addressed through the Select Committee process. The public will have an opportunity to make submissions during the Select Committee process.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
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Professor Steven Freeland has undertaken an expert peer review of the Bill. Professor Steven Freeland is an internationally recognised expert in space law and has been engaged by the Australian Government as a consultant to advise on the current review of the Australian *Space Activities Act 1998*.

There have been high-level discussions with overseas space policy agencies and regulatory bodies including the UK Space Agency, the Australian Department of Industry, Innovation and Science, the US State Department, the US Federal Aviation Authority, and the US Federal Communications Commission.

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
<p>However, the Bill provides for regulation making powers to set levies, fees and charges. Clause 91 provides regulation making powers to: impose a levy on holders of licences and permits under the Act for the purpose of recovering all of part of the reasonable direct and indirect costs of administering the Act; specifying the licensees and permit holders, or classes of licences or permit holders who are liable to pay the levy; providing for different levies for different classes of licensees or permit holders or on any other differential basis; specifying the levy or how the levy or rates of levy are calculated, and specifying when and how the levy is to be paid; prescribing fees and charges payable in respect of any matter under this Act or the manner in which fees and charges may be calculated; and providing for exemptions from, or waivers or refunds of, any fee, levy, or charge payable under the regulations, in whole or in part, in any class of case.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>Clauses 76 and 82 create strict liability offences. The former, which relates to interfering with a space object without reasonable excuse, is necessary to meet New Zealand's international obligations under the Technology Safeguards Agreement. The latter relates to the provision of false and misleading information and is standard in regulatory regimes of this kind. Both are regulatory offences that are punishable by fine only.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The relevant clauses are listed under the heading: The Meaning of a launch vehicle, payload and space object:</p> <ul style="list-style-type: none"> 91(1)(10) prescribing that any thing, or class of thing, is, or is not, a launch vehicle, payload, or space object for all purposes of the Act or for the purpose of any specified provisions of the Act; or in specified circumstances. 91(1)(11) prescribing that any thing, or class of thing, is, or is not, a launch facility or ground station for all the purposes of the Act or for the purpose of any specified provisions in the Act; or in specified circumstances. 91(1)(12) prescribing that any thing, or class of thing, is, or is not, a high altitude vehicle for all the purposes of the Act, or for the purpose of any specified provisions of the Act; or in specified circumstances. <p>These clauses are intended to future proof the Act for rapid advances in technology and allow for regulations that require only one licence where the dual functions of a particular technology might otherwise require two. These regulation making powers are subject to significant safeguards including consultation requirements in clause 91(2) and 91(3).</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>In addition to the clauses listed above, clause 91 also provides that the Governor-General may make regulations for all or any of the following purposes:</p> <ul style="list-style-type: none"> Licences and permits e.g. prescribing information and procedures to be followed in relation to any application, as well as conditions for licences and permits which may be different for different types of licence, permit, launch vehicle, payload, launch facility or high altitude vehicle or on any other basis (clause 91(1) (1)to(9)); Registration of space objects (clause 91(1) (13) to (16)); Levy, fees and charges (clause 91(1) (17) to (23)); General regulations (clause 91(1) (24) to (30)). <p>These regulation making powers are necessary to enable the effective and efficient operation of the regime. This is also consistent with the objective that the Bill provides a framework for decision making and is not highly prescriptive (as this would impose unnecessary costs on the industry). The regulation making powers are subject to significant safeguards including the consultation requirements in clause 91(2) and 91(3).</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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The Bill introduces a regular licensing regime to enable the development of a space industry with necessary protections to manage the associated risks to safety, security and the environment.