

# Departmental Disclosure Statement

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Maritime Powers Extension Bill
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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 New Zealand Customs Service.

The New Zealand Customs Service certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

8 June 2018

## Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information .....	4
Part Three: Testing of Legislative Content.....	6
Part Four: Significant Legislative Features .....	8

## **Part One: General Policy Statement**

The Maritime Powers Extension Bill amends the Customs and Excise Act 2018 and the Misuse of Drugs Act 1975 to incorporate New Zealand's rights and obligations under article 108 of the United Nations Convention on the Law of the Sea (UNCLOS) and article 17 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Drug Trafficking Convention) into domestic law.

The Bill has the following objectives:

- to provide the New Zealand Customs Service (Customs) with an additional option to disrupt drugs smuggling;
- to establish clear jurisdiction over offences under the Misuse of Drugs Act 1975.

### **Protecting New Zealand from harm caused by illicit drugs**

The Bill will amend the Customs and Excise Act 2018 to provide a framework for how Customs may stop, board, search, and take necessary enforcement action in international waters. These powers are consistent with Customs' existing maritime powers in New Zealand's territorial waters and contiguous zone, but are limited only to situations where —

- Customs has reasonable cause to suspect that a drugs smuggling offence has been, is being, or is likely to be committed; and
- in the case of foreign ships, the flag State has authorised actions in accordance with the Drug Trafficking Convention.

This will enable Customs to respond to suspected drugs smuggling activities before ships enter New Zealand's territorial waters or after they leave.

The powers proposed in this Bill will not be exercised lightly. However, Customs will consider this option alongside other available options to determine the most effective response to suspected offending.

### **Establishing clear jurisdiction over drugs smuggling offences committed in international waters**

The Bill also amends the Misuse of Drugs Act 1975 to establish offences relating to drugs smuggling outside New Zealand. This makes it an offence to be involved in the importation or exportation of controlled drugs or prohibited equipment or material, such as precursor substances, equipment, or materials to be used in producing or manufacturing controlled drugs.

These offences apply in a range of circumstances:

- if an individual on a ship in international waters is in control of the controlled drugs or prohibited equipment or material and the individual or another individual intends to import the item into New Zealand;
- if an individual on a ship in international waters is involved in other ways in the smuggling of these items into or out of New Zealand.

The penalties for these offences are consistent with importation and exportation offences that currently exist under the Misuse of Drugs Act 1975.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>NO</b>

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>YES</b>
<ul style="list-style-type: none"><li>• <a href="#">United Nations Convention on the Law of the Sea (UNCLOS)</a></li><li>• <a href="#">United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</a></li></ul>	

<b>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?</b>	<b>NO</b>
A National Interest Analysis was not required because the proposed changes did not meet the significance threshold.	
The implications of taking action in relation to these treaties have been assessed in the Regulatory Impact Statement.	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
Available at: <a href="http://www.customs.govt.nz/about-us/legislation/customs-bills">www.customs.govt.nz/about-us/legislation/customs-bills</a>	

<b>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?</b>	<b>NO</b>
The RIA was reviewed by Customs' internal quality assurance panel.	

<b>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?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## 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?**

Customs has worked closely with the Ministry of Foreign Affairs and Trade to ensure that the policy is consistent with New Zealand's international obligations.

### 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?**

Customs has considered the principles of the Treaty of Waitangi as part of policy development.

### 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:**

**(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?**

**YES**

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

**YES**

Clause 7 of the Bill amends existing offences under the Misuse of Drugs Act.

New sections 12E and 12F establish offences relating to the smuggling of controlled drugs and prohibited equipment or material in waters outside of New Zealand. The penalties for these offences are consistent with the equivalent offending under the Misuse of Drugs Act within New Zealand.

**3.4.1. Was the Ministry of Justice consulted about these provisions?**

**YES**

The Ministry of Justice has been consulted on both the policy and the draft Bill.

## Privacy issues

<b>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?</b>	<b>NO</b>
Relevant provisions under the Customs and Excise Act 2018 will apply.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
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## External consultation

<b>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?</b>	<b>NO</b>
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## Other testing of proposals

<b>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?</b>	<b>YES</b>
Customs has also consulted with the Ministry of Health which has departmental responsibility for administering the Misuse of Drugs Act, and the Crown Law Office which will have overarching responsibility for prosecuting any offences. The policy details have also been tested within Customs to ensure that policy details, and the draft legislation can be implemented as intended.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>YES</b>
Clause 8 of the Schedule to the Bill provides Customs with the power to make the following seized items forfeit to the Crown: <ul style="list-style-type: none"><li>• a controlled drug or precursor substance</li><li>• any equipment or material that is capable of being used in, or for, the commission of an offence under section 6(1)(b) of the Misuse of Drugs Act.</li></ul> Ships that have been detained are also forfeit to the Crown if one or both of the following applies: <ul style="list-style-type: none"><li>• a drug smuggling offence has been, or is being, committed on the ship</li><li>• the ship has been, or is, otherwise involved in the commission, or in facilitating the commission of a drug smuggling offence.</li></ul>	

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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## Significant decision-making powers

<p><b>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?</b></p>	<p><b>YES</b></p>
<p>The Schedule to the Bill (proposed Schedule 5A) extends a range of existing powers available to Customs within New Zealand territory into international waters. This includes:</p> <ul style="list-style-type: none"> <li>• stopping, boarding and searching suspect ships (clause 5)</li> <li>• powers to arrest individuals (clause 6)</li> <li>• the detention of a ship, including the power to direct (clause 7)</li> <li>• the seizure and forfeiture of prohibited items (controlled drugs and precursor substances, as well as the ship, if detained under clause 7 (clause 8).</li> </ul> <p>There are two separate thresholds for exercising these powers. Initial powers can be exercised where there is <b>reasonable cause to suspect</b> that the ship (or any individual on board) is involved in drug smuggling. This includes:</p> <ul style="list-style-type: none"> <li>• stopping and boarding suspect ships</li> <li>• questioning and preliminary and rub down searches of persons</li> <li>• initial searches of electronic devices.</li> </ul> <p>This enables Customs to undertake preliminary investigative activities to form a belief that an offence is being committed.</p> <p>More intrusive powers, such as full searches and arrest, must be exercised on the basis of a <b>reasonable cause to believe</b>. Customs officers may take further searches of persons and electronic devices only where there is reasonable cause to believe that drug smuggling evidence is carried on the person or is contained in the device.</p> <p>The powers to seize prohibited items and ships can only be exercised where there is evidence that an offence has been committed.</p> <p>In the case of foreign ships, a further threshold applies under clause 3 of the Schedule. Customs must seek consent to exercise any of these powers from the State that the ship is registered in (or is otherwise entitled to fly the flag).</p>	

## Powers to make delegated legislation

<p><b>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?</b></p>	<p><b>NO</b></p>
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<p><b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b></p>	<p><b>NO</b></p>
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### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
<p>Customs has worked closely with the Ministry of Foreign Affairs and Trade to ensure that the extraterritorial implications of this Bill are consistent with New Zealand's rights and obligations.</p> <p>The Bill further requires that the Attorney-General must give consent for all prosecutions to be taken under the new offence provision (clause 13). This provides an additional safeguard, and it is consistent with requirements for section 12C of the Misuse of Drugs Act which also has extraterritorial effect.</p>	