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To **inform, inspire** and **advocate**.

Those Anti-Terrorism Laws

Thrown into sharp focus by recent events, much has been claimed about New Zealand's current and proposed legislation on prevention of terrorism. This article summarises how the current legislation evolved, what it says, and the proposed changes now on their way through the Parliamentary process.

New Zealand's anti-terrorism legislation began as the *Terrorism (Bombings and Financing) Bill*, drafted before the tragic events of 9/11. Passed afterwards, its primary aim was to meet New Zealand's obligations to give effect to United Nations' resolutions and conventions against terrorism. In the Act as passed in 2002, the emphasis was on prohibiting entities which plan or undertake terrorist acts, and the procedures for defining and designating them. It created offences of terrorist bombing, financing terrorist groups and dealing in their property, and prohibited taking part in or recruiting for such entities.

Its definition of a terrorist act still stands – an action intended to cause death or serious bodily injury, or serious risk to the health or safety of a population, carried out to advance an ideological, political or religious cause. Such an act may destroy or seriously damage property of 'great value or importance', or cause major economic loss, or seriously disrupt an infrastructure facility 'if likely to endanger human life'. The terrorist act must be intended to induce terror in a civilian population or 'unduly compel' a government to do or abstain from doing something. However, New Zealand's definition also says that 'to avoid doubt', the fact that a person engages in any protest, activity, or dissent, or engages in any strike, lockout or other industrial action, is not in itself sufficient to infer a person is planning, preparing or committing a terrorist act. 'Designated entities' are those listed by the UN Security Council but can also be determined by our Prime Minister, who must have good cause to suspect that the entity has knowingly carried out, or has participated in carrying out at least one terrorist attack. Under our current law, all terrorist designations expire automatically after three years of listing, unless renewed by our High Court. New Zealand has no local designated terrorist entity.

In 2003, the *Terrorism Suppression Amendment Act* added 'terrorist offences' to the Crimes Act, thus prohibiting individual involvement in terrorist activities identified in the 2002 Terrorism Act (bombing, financing, recruiting etc). It allowed police (with the consent of the Attorney General) to obtain a warrant to use tracking devices and intercept private communications thought to be related to terrorism offences. It also added to the list of terrorist offences those of causing disease or sickness in animals, contaminating food, crops, water, or other products, and threats of harm to people or property, and covered the use or movement of unmarked plastic explosives and physical protection of nuclear material. The *Terrorism Suppression Amendment Bill* currently before Parliament follows a review of the law after three years of operation. Its main emphasis is on the process of designating a terrorist entity and aligning New Zealand legislation with UN Conventions on use of nuclear material in terrorism. It modifies the New Zealand procedure by removing the High Court from the review process, and extends the definition of terrorism to include interfering with the operation of a nuclear facility, if intended to cause death, serious injury, or substantial damage to property or the environment. The current Bill creates a new offence by an individual of 'undertaking a terrorist act'. It also removes the previous defence to a charge of funding terrorist organizations if the funding were to promote democratic government or human rights.

Parliament's Foreign Affairs and Trade Select Committee recently reported back on this Bill. The Committee said that decisions to designate terrorist entities involve judgements about national security that are more properly made by the Executive rather than the High Court. Other recommended changes include narrowing the definition of offences involving nuclear material so protests such as those against shipping of nuclear waste through the Tasman Sea are not taken in. In Party minority views, the Greens supported some of the Bill but felt it detrimentally affects the civil liberties of New Zealanders. Their concerns focus on the inclusion of 'terrorist act' as an offence, saying this is already covered in other legislation, and dilution of the freedom to collect funds 'for the purpose of advocating democratic government or the protection of human rights'. National supported the Bill but doubted it would increase New Zealand's vigilance against terrorism. It also suggested the lack of any New Zealand-originated terrorist-organisation designations (compared with Australia's 88) meant the Government was being "seriously negligent". 'We draw New Zealanders' attention to the fact that, in the hands of the same decision-makers, this Bill will change nothing,' they said.

Julia Stuart, Editor, Law Scene

Parliament

Range of transport initiatives

The **Land Transport Amendment Bill (No.4)** clarifies the law regarding drug-impaired drivers. It creates a new offence of driving while impaired by use of drugs - illegal substances listed in the 'controlled drug' schedule or prescription medicines.

A person with a valid prescription for such a drug can still be stopped from driving if they are incapacitated by its use. 'Impairment' is a lower threshold than 'incapable of proper control'; it is tested for first by a listed series of roadside checks and then by a compulsory blood test if these are failed.

This Bill also protects personal information held on the Motor Vehicle Register. Currently anyone can obtain information about a vehicle owner for a small fee, and this has been used for intrusive marketing activities or for harassment of drivers and sometimes for theft of particular vehicles. Vehicle-related information continues to be available, but personal information about the owner will be withheld from public inquiry. One-off authorizations (such as safety recalls) will still be allowed but have to go through the Minister of Transport.

Also in this batch of bills, the focus of the **Public Transport Management Bill** gives regional councils greater powers to regulate their regional public transport services while keeping the commercial aspect for operators in mind.

It means they can plan such services and require operators who receive funding from rates and national transport sources to operate according to frequency, capacity and times set by the councils. Councils can also set quality and performance standards.

The Bill focuses on scheduled services, so that bus and harbour ferry services are subject to the councils' planning and control while general taxi services and inter-regional passenger services are not.

Lastly, the **Land Transport (Driver Licensing) Amendment Bill** raises the minimum driver licensing age from 15 to 16 and extends the length of the learner licensing period from 6 to 12 months.

All three of these bills are currently before the Transport and Industrial Select Committee. Submissions for the first two close on 4 December.

Land Transport Management Amendment Bill

This Bill was tabled in Parliament on October 18th but (at press time) has only just begun its progress through the House. It implements recommendations from the Next Steps Review of the Land Transport Sector (tabled in May) and creates a new funding and planning system for land transport, including full dedication of fuel excise duties to the National Land Transport Fund from 1 July next year.

The legislation also enables the levying of a regional fuel tax which regions can use for priority projects which would otherwise not get funding 'within the desired time frame'.

It can be used only for new public transport infrastructure

and roading projects. The maximum tax will be ten cents per litre, with a maximum of five cents available for roading.

A new Crown entity, the NZ Transport Agency, will combine the functions of Land Transport New Zealand and Transit New Zealand.

Births Deaths Marriages and Relationships Registration Bill and Public Registers

This Bill which was hotly opposed by a number of political parties, genealogists, individual tracing agencies such as the Salvation Army, and the media, has been withdrawn and will be rewritten.

Following hearings by the Government Administration Committee, Internal Affairs Minister Rick Barker wrote to the Committee saying new proposals would be made to allow access to records and at the same time safeguard private information. They would include requiring applicants for certificates and printouts to present adequate identification, creating an 'access register' so people can find out who has accessed their records, and enabling a person to request that their records not be disclosed to the public.

At the same time as the flurry over the Bill, the Law Commission produced an issues paper, *Public Registers, Review of the Law of Privacy: Stage 2*. (A summary appeared in the September issue of *Law Scene*). It noted that the Privacy Act privacy principles are not enforceable in law and have been unable to prevent uncontrolled use by private sector commercial interests. Submissions to the Law Commission on their paper close on November 5th.

Immigration Bill deadline extended

The Transport and Industrial Relations Select Committee recently extended the deadline for submissions on the Immigration Bill. The new deadline is Friday, 2 November.

Reported Back

The **Human Tissue Bill** (a Government bill) regulates the collection and use of tissue from dead human bodies and sets up a framework for informed consent for human tissue use. It also regulates trading, import, export and use of tissue for non-therapeutic purposes such as research and education.

The Health Select Committee notes that use of tissue from living people is largely covered by existing legislation and common law, but the bill also covers informed consent for some wider uses.

The Report says most concern focused on organ donation and ways to increase those rates, the consent framework, the impact of the Bill on research, provisions for the sale, purchase and importation of living tissue and the collection and use of gametes, embryos and foetal tissue.

Most of the Committee did not recommend establishing an organ donation register at this time but want a clause in the Bill to allow an opt-on register some time in the future.

They also noted that while informed consent about the use of tissue prior to death was helpful, it should not over-ride the wishes of the surviving family.

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Legislation Update

Legislation	Stage and Progress	Impact
Births Deaths Marriages & Relationships Amendment Bill	Government Administration Committee report due 31 October.	Regulates access to births, deaths, marriages and relationships information.
Building Amendment Bill	Social Services Committee report due 5 November.	Amends Building Act to improve clarity & effectiveness of regulatory framework; reduce risks of building failure.
Children, Young Persons & Their Families Amendment (No. 4) Bill	Awaiting second reading. Amended by SOP 261.	Aims to improve youth justice processes, prevent persistent offending. CYFS may assign investigation and care to NGOs.
Crimes (Repeal of Seditious Offences) Amendment Bill	Second reading completed.	Removes the crime of 'sedition' from the statute books.
Criminal Procedure Bill	In committee stages in the House. Amended by SOPs 50, 51, 97, 98.	Omnibus bill to improve court efficiency, modify jury system, change double jeopardy.
Criminal Proceeds (Recovery) Bill	Law & Order Select Committee hearing submissions.	Enables confiscation of property resulting from crime despite no conviction.
Education (National Standards of Literacy & Numeracy) Amendment Bill	Private Member's bill, Katherine Rich. Awaiting first reading.	Requires publication of agreed national standards of literacy and numeracy, and requires schools to report their progress.
Electoral Finance Bill	Justice & Electoral Committee report due 25 January 2008.	Attempts to clarify and make more transparent political party election funding.
Employment Relations (Flexible Working Hours) Amendment Bill. Private Members' Bill, Sue Kedgley	Going through Committee of the House stages.	Enables employees with young and dependent children to request part-time, flexible & reduced working hours.
Family Courts Matters Bill	Submissions due 29 October.	Increases openness of Family Court proceedings, new mediation processes.
Foreshore & Seabed Act (Repeal) Bill, Private Member's Bill, Tariana Turia	Introduced. Awaiting first reading.	Repeals the Foreshore & Seabed Act and restores previous legislation.
Gambling Amendment Bill (No. 2)	Submissions closed.	Tidies up loose ends, redefines terms and closes loopholes in main Act.
Human Tissue Bill	Awaiting second reading. See p.2	Regulates supply and use of human tissue & organs and consent provisions.
Human Tissue (Organ Donation) Amendment Bill: Private Member's Bill, Jacqui Blue.	Awaiting second reading. See p.4	Sets up a register where people can place their legal binding wish (or objection) to be an organ donor; promotes donation.
Immigration Bill	Submissions deadline extended to 2 November.	Rewrites and consolidates immigration legislation, introduces new visas.
Land Transport Amendment Bill (No.4)	Submissions close 14 December 2007. See p.2	Extends prohibition on driving while alcohol-impaired to drug-impaired, and introduces compulsory impairment test.
Land Transport (Driver Licensing) Amendment Bill	Before Transport & Industrial Relations Committee. See p.2	Raises minimum driver licensing age from 15 to 16,
Oaths Modernisation Bill	Awaiting second reading.	Modernises the language used in oaths.
Principles of the Treaty of Waitangi Deletion Bill Private Member's Bill, Doug Woolerton	Before Justice & Electoral Select Committee. Report due 21 December 2007.	Eliminates all references to the principles of the Treaty of Waitangi from all New Zealand Statutes.
Protection of Personal & Property Rights Amendment Bill	Awaiting second reading.	Amends enduring power of attorney provisions.
Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill (Private Members' Bill Martin Gallagher)	Second reading postponed to 6 November 2007.	Clarifies restrictions on and oversight of TV broadcast advertising of liquor.
Social Assistance (Debt Prevention & Minimisation) Amendment Bill	Social Services Select Committee report due 7 February 2008.	Enables data matching so MSD can prevent and recover debts.
Succession (Homicide) Bill	Third reading in progress.	Defines who may not benefit from an unlawful killing.
Terrorism Suppression Amendment Bill	Awaiting second reading. See p.1	Changes provisions for designating terrorist organisations and introduces new offences involving nuclear materials.
Young Offenders (Serious Crimes) Bill – Private Member's Bill, Ron Mark	Before Law & Order Select Committee; submissions closed. Report due 28 September.	Makes 10-14 year olds who commit 'serious offences' subject to Youth Court.

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The Select Committee recommended that the Bill explicitly state that a pre-death informed consent decision did not have to be acted on or require tissue to be collected.

Trading in human tissue is generally prohibited but the current Government provision of income support for kidney or liver live donors would not be affected. Recovering of reasonable costs by the Blood Service and Cord bank could also continue.

The Committee wants a new section to clarify the status of dead foetal tissue, and wants gametes and embryos specifically excluded from this Bill while stem cells once collected are covered. Collection of gametes and embryos from dead persons are covered under the Human Assisted Reproductive Technology legislation, but the Committee wants that amended to cover informed consent.

At the same time the Committee considered the **Human Tissue (Organ Donation) Amendment Bill** put forward by National MP Jacqui Blue. The majority decided the organ donor register proposed in this Bill was unnecessary at this time, pointing out that one could be established in future under a new provision in the main Bill.

In minority views, the Maori Party said they felt the main Bill ignored the recognition of the collective in the consent process and the provisions for wishes of the immediate family were insufficient. They called the legislation racist and said it was in breach of the Treaty of Waitangi.

The National Party supported the fundamental premise that the wishes of the individual have primacy, but supports the immediate setting up of an opt-on, voluntary organ and tissue donor register.

News

Law Commission work plan approved

In the next year, the Law Commission will undertake thirteen new projects, some of which are related to work already under way.

They include reforming of criminal procedure before and during trial to improve the fairness and efficiency of the process, and reviewing Acts on the Misuse of Drugs (1975), Land Transfer (1952); War Pensions (1954). The Commission will also review Part 8 of the Crimes Act covering all forms of assault (linked to its work on developing sentencing guidelines), and the law relating to private schools.

The Commission will also consider further reform of Habeas Corpus Procedure (to remedy some minor problems with the Habeas Corpus Act), and will be involved in the Ministry of Health's Review of Alcoholism and Drug Addiction Act 1966 and a project to reduce the level and impact of organised crime in New Zealand (in conjunction with the Police and the Ministry of Justice).

Walking access over private land

Government has accepted the recommendations of an independent panel which was set up to address walking access issues, Rural Affairs Minister Damien O'Connor said recently.

The review was prompted by the need for clear and enduring rules around access to the outdoors amid changing values and patterns of rural land ownership in New Zealand, Mr O'Connor said.

All new walking access over private land, including Maori land, is now to be by negotiation and agreement with the landholder. The only exceptions are where access is achieved through existing legal mechanisms, such as esplanade reserves established on subdivision, marginal strips created on the disposal of Crown land, access created as part of tenure review of Crown pastoral lease land, and access created as a condition for consent to the acquisition of land by overseas persons.

The priorities for negotiation over private land should be coastal areas where public access on both the foreshore and dry margin is unavailable, and restoring, realigning and where necessary creating access along water margins.

A just-announced advisory panel will develop a strategy setting out new areas for open access, develop a mapping database for public walking access and a voluntary code of conduct for walkers. It will also work on a Memorandum of Understanding with the Conservation Department about walking access on its land.

The panel will be chaired by Geraldine farmer John Acland and has seven members with a range of interests in outdoor access from throughout New Zealand.

Youth drinking problems

Proposals to address youth drinking and to tighten the rules around alcohol advertising were announced recently. They follow two reviews: one into the sale and supply of liquor to minors and the other to review the regulations around alcohol advertising.

A key proposal is to reduce the blood alcohol content limit to zero for drivers under 20 who do not hold a full licence.

Others include creating offences for adults (other than parents or guardians) who supply alcohol to a minor who consumes it in a public place, and minors who supply alcohol to other minors who consume it in a public place. Managers convicted three times for selling liquor to a minor within a two-year period will lose their licence, and the only defence for selling alcohol to a minor is if the seller sighted one of the approved specified age identification documents.

Advertising will be controlled by strengthening the self-regulatory system and widening it to cover a broader range of marketing techniques across all media, including packaging, labelling, merchandising and promotions. Monitoring will be independently audited and the programme after two years. A programme of research based on the policy goals is also planned.

New Zealand Federation of Voluntary Welfare Organisations

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