

Brokering (Weapons and Related Items) Controls Bill

Government Bill

As reported from the Foreign Affairs, Defence and Trade Committee

Commentary

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Brokering (Weapons and Related Items) Controls Bill and recommends that it be passed with the amendments shown.

Introduction

The Brokering (Weapons and Related Items) Controls Bill seeks to establish a regime to regulate the brokering of weapons and related items by New Zealanders and New Zealand-based entities.

Brokering involves negotiating, arranging, or facilitating the transfer of weapons and related items from one foreign country to another. It does not include importing, exporting, or moving weapons and related items within New Zealand.

The bill would prevent New Zealanders and New Zealand entities from engaging in brokering where there is a risk of weapons or related items being transferred to illegitimate users or undesirable destinations, for example a conflict zone.

The bill would support New Zealand's commitments under the multilateral Arms Trade Treaty, which New Zealand ratified in 2014. The treaty regulates the international trade in conventional arms. Under the treaty, New Zealand is required to take measures to regulate any brokering of conventional arms that takes place within its jurisdiction. It would also support New Zealand's commitments to the four inter-

national export control regimes¹ which recognise brokering controls as a counter-proliferation tool.

This commentary covers the main amendments we recommend to the bill. It does not discuss minor or technical amendments.

Jurisdictional scope of the brokering regime

We recommend inserting new clause 3A in Part 1 of the bill to outline the jurisdictional scope of the regime. This would make it clear that the bill would apply to brokering activity that is carried out in New Zealand or elsewhere by people who are in New Zealand, and also by New Zealand citizens, people ordinarily resident in New Zealand, and entities incorporated or registered under New Zealand law, regardless of their location.

Gazette notice to be published on website

Clause 4(2) would provide for the Secretary of Foreign Affairs and Trade to specify, by notice in the *Gazette*, the categories or parts of the Strategic Goods List that are relevant to the definitions of dual-use goods and military end-use goods.

We recommend inserting new subclause 4(3)(b) to require the *Gazette* notice to be made available on the Ministry of Foreign Affairs and Trade's website.

The Regulations Review Committee expressed its concern that compliance with clause 9(1), the requirement to be registered and have a permit for brokering activity, or with the exception in clause 9(2)(b) of the bill as introduced, would rely on a person's knowledge of the status of a weapon or item. We share this concern, and consider that our recommendation would help address this by providing for the relevant information to be published on the ministry's website.

Providing clarity about the burden of proof

Clause 9(1) would require a person to register and obtain a permit to conduct brokering activity, with certain exceptions. Clause 10 would make it an offence to carry out brokering activity without meeting these requirements, unless any of the exceptions under clauses 9(2) to (4) of the bill as introduced applied, if a person knows or ought to know the registration and permit requirements.

The Office of the Clerk expressed concern that, in light of the structure of clause 9, the offence provision in clause 10 could create a risk of reversing the usual burden of proof, requiring the potential defendant to disprove an element of the offence. We understand that this is not the intention or effect of these provisions. A person would commit an offence where they carried out a brokering activity without being registered or having a permit, where none of the exceptions applied, and if they knew or

¹ The four international export control regimes are the Nuclear Suppliers Group, the Wassenaar Arrangement, the Australia Group, and the Missile Technology Control Regime.

ought to know the requirements. Nevertheless, we recommend some changes to provide clarity.

We recommend moving the exceptions in clauses 9(2) to (4) to new clause 9A. This would help to make them more easily identifiable as exceptions to the general requirement to register and hold a permit.

We recommend the insertion of clause 9A(1)(b), replacing clause 9(2), to remove the knowledge element (that the person did not know, and could not reasonably be expected to know) from the exception to comply with clause 9(1). Our recommended amendment would instead require a person to take reasonable steps to ensure that the dual use goods would not be used for a “prohibited use”, as defined in the bill.

We understand that if there were any evidence to suggest that an exception might apply, the onus would be on the prosecution to prove beyond reasonable doubt that the justification would not apply.

We are aware that clause 34 of the bill would require the Attorney-General to consent to any prosecution under the legislation. This additional procedural safeguard would ensure that only appropriate cases would proceed to a prosecution.

The elements of the offence

We recommend amending clause 10(1) to set out more clearly the elements of the offence. In particular, clause 10(1)(c) would provide that a person commits an offence if, when carrying out the brokering, they know or ought to know that (except in some circumstances) they must not do so unless they are registered or have a permit. The “circumstances” referred to are the exceptions in new clause 9A.

Narrowing the exception for employees

We recommend replacing clause 9(4) with clause 9A(3) which would narrow the current exception for employees. The exception would only apply to an employee who had reasonable grounds to believe that the employer was complying with the legislation in New Zealand, or an equivalent overseas regime. This would mitigate our concern that an innocent employee could be liable if the company in question was not complying with a brokering regime in New Zealand or elsewhere, and also any risk of an employee inadvertently evading liability.

As above, we note the Attorney-General’s consent to any prosecution under the legislation would act as an additional safeguard.

Annual reporting as a condition of registration

Clause 18 would provide for conditions to be imposed on a broker’s registration. We recommend inserting clause 18A(1) to provide that, as a condition of their registration, a broker must submit an annual report to the Secretary of Foreign Affairs and Trade.

Clause 18A(2) would provide that the annual report must be in the prescribed form and manner, and contain the prescribed particulars. We recommend inserting clause 38(1)(ba) to provide for the Governor-General, by Order in Council on the recom-

mendation of the Minister of Foreign Affairs and Trade, to make regulations prescribing these things.

Period for which brokers required to keep records

We recommend amending clause 21(1) to increase the period brokers are to keep any prescribed records, from 5 to 7 years after the end of the calendar year to which the records relate. This would be consistent with requirements concerning tax records, and Fire and Emergency New Zealand contracts and levy payments.

Offences committed outside New Zealand

We recommend deleting clause 33(1)(a)(iii) so that the bill would not apply to a person who has been found in New Zealand and has not been extradited. We do not consider this provision fit for purpose within the context of the bill. It would have treated the offence as one attracting universal jurisdiction. The offence in clause 10 relates to carrying out brokering activity without the requisite registration or permit in New Zealand, rather than prohibiting engaging in brokering activity per se. We understand that foreign nationals with no physical presence in or link to New Zealand would not be registered under New Zealand's brokering regime.

Appendix

Committee process

The Brokering (Weapons and Related Items) Controls Bill was referred to the committee on 15 August 2017. The closing date for submissions was 16 February 2018. We received and considered nine submissions from interested groups and individuals. We heard oral evidence from four submitters at hearings in Wellington.

We received advice from the Ministry of Foreign Affairs and Trade. The Regulations Review Committee reported to us on the powers contained in clause 9 of the bill.

Committee membership

Simon O'Connor (Chairperson)

Hon Gerry Brownlee (until 21 March 2018)

Golriz Ghahraman

Hon Willie Jackson

Hon Tim Macindoe (from 21 March 2018)

Hon Todd McClay

Hon Mark Mitchell (until 21 March 2018)

Christopher Penk (from 21 March 2018)

Louisa Wall

Dr Duncan Webb

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Rt Hon Winston Peters

Brokering (Weapons and Related Items) Controls Bill

Government Bill

Contents

	Page
1 Title	3
2 Commencement	3

Part 1

Preliminary provisions

3 Purpose	3
<u>3A Application</u>	<u>3</u>
4 Interpretation	4
5 Meaning of brokering activity	5
6 Meaning of equivalent overseas regime	6
7 Transitional, savings, and related provisions	6
8 Act binds the Crown	6

Part 2

Brokering activity, registration, and permits

Subpart 1—Main requirements and offences relating to brokering activity

9 Registration and permit required for brokering activity	6
<u>9A Exceptions to requirements for registration and permit</u>	<u>7</u>
10 Offence to carry out brokering activity without registration or permit	7
11 Broker must comply with conditions of registration and permit	8
12 Offence to breach conditions of registration or permit when carrying out brokering activity	8
13 Offence to breach conditions of registration or permit other than in course of carrying out brokering activity	9

Brokering (Weapons and Related Items) Controls Bill

	Subpart 2—Registration of brokers	
14	Application for registration	9
15	Criteria for registration	9
16	Refusal to register broker	10
17	Registration of broker	10
18	Secretary may impose conditions on registration	10
18A	<u>Brokers must provide annual report</u>	10
19	Duration of registration	10
20	Cancellation or surrender of registration	11
	<i>Obligation to keep and produce records and answer questions</i>	
21	Brokers must keep and produce records and answer questions	11
22	Offence to fail to keep or produce records or answer questions	11
	Subpart 3—Permits for brokering activity	
23	Application for permit	12
24	Criteria for permit	12
25	Refusal to give permit	12
26	Duration of permit	12
27	Secretary may impose conditions on permit	12
28	Cancellation or surrender of permit	13
	Subpart 4—Civil enforcement	
29	Civil enforcement	13
30	Enforceable undertakings	13
31	Enforcement of undertakings	14
32	Injunctions	14
	Part 3	
	Miscellaneous provisions	
	<i>Extraterritorial application</i>	
33	Offences committed outside New Zealand	15
	<i>Attorney-General's consent</i>	
34	Attorney-General's consent required	16
	<i>Applications for registration and permits</i>	
35	Applications for registration and permits	16
36	False or misleading information	16
	<i>Appeals against decisions about registration and permits</i>	
37	Appeals against certain decisions to District Court	17
	<i>Regulations and further miscellaneous provisions</i>	
38	Regulation-making powers	17
39	Disclosure of information to overseas authority	18
40	Register of brokers	18

41	Consequential amendment	19
	Schedule 1	20
	Transitional, savings, and related provisions	
	Schedule 2	21
	Consequential amendment	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Brokering (Weapons and Related Items) Controls Act **2017**.

2 Commencement

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent:
 - (a) **Part 1** (which contains preliminary provisions):
 - (b) **subparts 2 and 3 of Part 2** (which relate to registration of brokers and permits for brokering activity):
 - (c) **section 36** (which makes it an offence to provide false or misleading information in an application for registration or for a permit). 10
- (2) The rest of this Act comes into force on the day that is 120 days after the date on which it receives the Royal assent.

Part 1

Preliminary provisions 15

3 Purpose

The purpose of this Act is to—

- (a) regulate the brokering of weapons and related items; and
- (b) support New Zealand’s commitments under the Arms Trade Treaty.

3A Application 20

- (1) This Act applies to any brokering activity that is carried out—
 - (a) in any place (including any brokering activity that is carried out wholly or partially outside New Zealand) and by a person—
 - (i) who is in New Zealand; or
 - (ii) who is a New Zealand citizen or ordinarily resident in New Zealand; or 25
 - (iii) that is an entity incorporated or registered under the law of New Zealand; or

(b) wholly or partially on board a ship or an aircraft described in **section 33(1)(b)**.

(2) See **sections 9A and 33**.

4 Interpretation

(1) In this Act, unless the context otherwise requires,— 5

Arms Trade Treaty means the Arms Trade Treaty done at New York on 28 March 2013

broker means a person who is registered as a broker under **subpart 2 of Part 2**

brokering activity has the meaning set out in **section 5** 10

department has the meaning given in section 2(1) of the Public Finance Act 1989

dual-use goods means goods—

(a) that may have a civilian use but that are intended for military end-use or that may have a military application; and 15

(b) that fall within a specified category

equivalent overseas regime has the meaning set out in **section 6**

goods—

(a) has the meaning given in section 2(1) of the Customs and Excise Act 1996; but 20

(b) also includes documents that are not otherwise goods within that meaning

military end-use means—

(a) incorporation into military items that fall within a specified category; or

(b) use, production, or testing of equipment and components for the development, production, or maintenance of military items that fall within a specified category; or 25

(c) use of any unfinished products for the production of military items that fall within a specified category

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 30

permit means a permit given under **subpart 3 of Part 2**

prohibited use, in relation to dual-use goods, means any of the following uses:

(a) the development, production, or deployment of nuclear, chemical, or biological weapons or their means of delivery: 35

(b) military end-use:

- (c) use as parts or components of military items that fall within a category of the strategic goods list that is specified for the purposes of the definition of military end-use

Secretary means the Secretary of Foreign Affairs and Trade

specified category, in relation to the definition of **dual-use goods** or **military end-use**, means a category or part of the strategic goods list that is specified for the purpose of that definition in accordance with **subsection (2)** 5

strategic goods list means the list of all goods and classes of goods whose exportation is prohibited under section 56 of the Customs and Excise Act 1996 because they have or may have a strategic use (within the meaning of section 56(2A) of that Act) that the Secretary is required to maintain and to publish under section 56(2G) and (2H) of that Act 10

weapon or related item means any goods specified in the strategic goods list.

- (2) The Secretary may, by notice in the *Gazette* after consultation with the Minister, specify categories or parts of the strategic goods list for the purposes of the definitions of dual-use goods and military end-use. 15

- (3) ~~A notice under **subsection (2)** is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.~~

- (3) A notice under **subsection (2)**— 20

- (a) is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act; and

- (b) must be made publicly available on an Internet site maintained by or on behalf of the Secretary. 25

5 **Meaning of brokering activity**

In this Act, **brokering activity**—

- (a) means arranging, facilitating, or negotiating a transaction that involves the international transfer of weapons or related items from a place outside of New Zealand to another place outside of New Zealand; and 30

- (b) includes,—

- (i) in relation to a transaction described in **paragraph (a)**, acting as an agent for a person involved in the transaction or as an intermediary between 2 or more persons involved in the transaction; and 35

- (ii) acquiring or storing weapons or related items in a place outside of New Zealand for the purpose of transferring the weapons or related items to any person outside of New Zealand; but

- (c) does not include the provision of any service that is merely ancillary to an activity described in **paragraph (a) or (b)** (for example, the provision of administrative, customs broking, or financial services in relation to weapons or related items).
- 6 Meaning of equivalent overseas regime** 5
- In this Act, an overseas regime that regulates brokering activity, or that imposes export controls in relation to weapons or related items, is an **equivalent overseas regime** if the Secretary is satisfied that the regime is—
- (a) substantially the same as the regime under this Act; or
- (b) sufficiently equivalent, in relation to the regulation of brokering activity in accordance with the Arms Trade Treaty, to the regime under this Act. 10
- 7 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.
- 8 Act binds the Crown** 15
- This Act binds the Crown.

Part 2

Brokering activity, registration, and permits

- Subpart 1—Main requirements and offences relating to brokering activity 20
- 9 Registration and permit required for brokering activity**
- (1) A person must not carry out a brokering activity unless the person—
- (a) is registered as a broker; and
- (b) has a permit for the activity.
- (2) ~~**Subsection (1)** does not apply to a person—~~ 25
- (a) ~~who carries out a brokering activity in relation to a weapon or related item that is dual-use goods; and~~
- (b) ~~who, at the time the person carries out the brokering activity, does not know (and cannot reasonably be expected to know) that the weapon or related item will or may be used for a prohibited use.~~ 30
- (3) ~~**Subsection (1)** does not apply to a person—~~
- (a) ~~who carries out a brokering activity from a place outside of New Zealand; and~~
- (b) ~~who complies with an equivalent overseas regime in relation to the brokering activity.~~ 35

- (4) **Subsection (1)** does not apply in relation to anything done—
- (a) by a person, as an employee, for the person's employer; or
 - (b) by or on behalf of a department.
- (5) It may be presumed, in the absence of any evidence to the contrary, that an exception described in **subsection (2), (3), or (4)** does not apply. 5
- 9A Exceptions to requirements for registration and permit**
- (1) **Section 9** does not apply to a person—
- (a) who carries out a brokering activity in relation to a weapon or related item that is dual-use goods; and
 - (b) who, before the person carries out the brokering activity, has taken reasonable steps to ensure that the dual-use goods will not be used for a prohibited use. 10
- (2) **Section 9** does not apply to a person—
- (a) who carries out a brokering activity from a place outside New Zealand; and 15
 - (b) who complies with an equivalent overseas regime in relation to the brokering activity.
- (3) **Section 9** does not apply to a person who carries out a brokering activity on behalf of the person's employer but only if, in relation to that activity, the person has reasonable grounds to believe that the employer complies with **section 9** or an equivalent overseas regime. 20
- (4) **Section 9** does not apply in relation to anything done by or on behalf of a department.
- 10 Offence to carry out brokering activity without registration or permit**
- (1) A person commits an offence if— 25
- (a) the person carries out a brokering activity in breach of **section 9**; and
 - (b) at the time the person carries out the activity, the person knows or ought to know that the person must comply with **section 9**.
- (1) A person commits an offence if—
- (a) the person carries out a brokering activity in breach of **section 9**; and 30
 - (b) none of the exceptions described in **section 9A** apply to the person or the brokering activity; and
 - (c) at the time that the person carries out the activity, the person knows or ought to know that (except in some circumstances) a person must not carry out a brokering activity unless the person— 35
 - (i) is registered as a broker; and
 - (ii) has a permit for the activity.

- (1A) It may be presumed, in the absence of any evidence to the contrary, that an exception described in **section 9A** does not apply.
- (1B) The prosecutor need not assert, in a charging document relating to an offence against **subsection (1)**, that an exception described in **section 9A** does not apply. 5
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 5 years or a fine not exceeding the amount described in **subsection (3)**, or both: 10
- (b) in any other case, to a fine not exceeding the amount described in **subsection (3)**.
- (3) The maximum amount of the fine is the greater of—
- (a) \$100,000 (in the case of an individual) or \$1 million (in any other case); and 15
- (b) if a court is satisfied that the offence occurred in the course of producing a commercial gain, and if the value of that commercial gain can be readily ascertained, 3 times the value of that commercial gain.
- (4) ~~The prosecutor need not assert, in a charging document relating to an offence against **subsection (1)**, that an exception described in **section 9(2), (3), or (4)** does not apply.~~ 20
- 11 Broker must comply with conditions of registration and permit**
- A broker must comply with—
- (a) any conditions of the broker's registration; and
- (b) any conditions of a permit held by the broker. 25
- 12 Offence to breach conditions of registration or permit when carrying out brokering activity**
- (1) A broker who knowingly or recklessly carries out a brokering activity in breach of **section 11** commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 5 years or a fine not exceeding the amount described in **subsection (2)**, or both: 30
- (b) in any other case, to a fine not exceeding the amount described in **subsection (2)**.
- (2) The maximum amount of the fine is the greater of— 35
- (a) \$100,000 (in the case of an individual) or \$1 million (in any other case); and

- (b) if a court is satisfied that the offence occurred in the course of producing a commercial gain, and if the value of that commercial gain can be readily ascertained, 3 times the value of that commercial gain.

13 Offence to breach conditions of registration or permit other than in course of carrying out brokering activity 5

A broker who, without reasonable excuse and other than in the course of carrying out a brokering activity, breaches **section 11** commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or a fine not exceeding \$10,000, or both: 10
- (b) in any other case, to a fine not exceeding \$20,000.

Subpart 2—Registration of brokers

14 Application for registration

- (1) A person may apply to the Secretary for registration as a broker.
- (2) The application must be made in accordance with **section 35**. 15

15 Criteria for registration

- (1) The Secretary may register a person as a broker only if the Secretary is satisfied that the person is a fit and proper person.
- (2) For the purpose of considering whether a person is a fit and proper person, the Secretary may take into account— 20
 - (a) any conviction for any offence punishable by imprisonment for 12 months or longer, whether or not—
 - (i) the conviction was in a New Zealand court; or
 - (ii) the offence was committed before the commencement of this Act; and 25
 - (b) if the person has been previously registered as a broker, whether the person breached a condition of that registration or whether that registration has been cancelled; and
 - (c) if the person has been given a permit under this Act, whether the person has breached a condition of that permit or whether that permit has been cancelled; and 30
 - (d) the financial position of the person; and
 - (e) whether the application for registration contains information that is false or misleading; and
 - (f) any other information and evidence (including in relation to any associate of the person) that may be relevant. 35

- (3) If the person is a body corporate, **subsection (2)(a), (b), and (c)** must be read as if it refers to the body corporate and its officers.
- (4) The Secretary may, for the purposes of **subsection (2)**,—
 - (a) seek and receive any information as the Secretary thinks fit; and
 - (b) consider information obtained from any source.

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16 Refusal to register broker

If the Secretary refuses to register a person as a broker, the Secretary must give the person written notice of the refusal.

17 Registration of broker

If the Secretary approves an application for registration, the Secretary must, as soon as practicable,—

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- (a) give the broker written notice specifying the date on which the registration takes effect and the duration of the registration; and
- (b) enter the following information on the public register:
 - (i) the broker's full name and trading name:
 - (ii) the date of registration and the date of its expiry:
 - (iii) any other particulars that may be prescribed in regulations.

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18 Secretary may impose conditions on registration

- (1) The Secretary may impose any conditions on a broker's registration that are consistent with or for the purpose of—
 - (a) the effective administration of this Act:
 - (b) the security, defence, or international relations of New Zealand:
 - (c) New Zealand's international obligations.
- (2) The Secretary may impose the conditions when registering the broker or at any other time.

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18A Brokers must provide annual report

- (1) It is a condition of a broker's registration that the broker must provide an annual report to the Secretary.
- (2) The annual report must be provided in the prescribed form and manner and contain the prescribed particulars.

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19 Duration of registration

- (1) A broker's registration is effective from the date of registration until the earliest of the following:
 - (a) the close of the day that is 3 years after the date of registration:

- (b) the end of the period specified by the Secretary in the written notice under **section 17(a)**;
 - (c) the cancellation or surrender of the registration.
- (2) A registration may be renewed by paying the prescribed fee (if any) to the Secretary at any time during the period that the registration is effective. 5
- (3) On payment of the prescribed fee, the Secretary may renew the registration for a further period determined by the Secretary (not being longer than 3 years) unless the Secretary is no longer satisfied of the matters set out in **section 15**.
- 20 Cancellation or surrender of registration**
- (1) The Secretary may, by written notice, cancel a broker's registration if— 10
 - (a) the Secretary is no longer satisfied of the matters set out in **section 15**; or
 - (b) the broker breaches **section 9, 11, 21, or 36(1)**.
- (2) The cancellation of a broker's registration takes effect on the date specified by the Secretary in the notice, which must be a date after the date of that notice. 15
- (3) A broker may surrender the broker's registration by written notice to the Secretary.
- (4) The surrender takes effect on the date specified by the broker in the notice, which must be a date after the date of that notice.
- (5) If a broker's registration is cancelled or surrendered, any permit held by the broker under **subpart 3** is cancelled at the time that the cancellation or surrender takes effect. 20

Obligation to keep and produce records and answer questions

21 Brokers must keep and produce records and answer questions

- (1) A broker must keep any prescribed records for a period of at least ~~5 years~~ 7 years after the end of the calendar year to which the records relate. 25
- (2) A broker must, when required,—
 - (a) make the records available to the Secretary or a constable;
 - (b) provide copies of the records to the Secretary or a constable;
 - (c) answer any questions in respect of the records that are asked by the Secretary or a constable. 30

22 Offence to fail to keep or produce records or answer questions

A broker who, without reasonable excuse, fails to comply with **section 21** commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or a fine not exceeding \$10,000, or both: 35

- (b) in any other case, to a fine not exceeding \$20,000.

Subpart 3—Permits for brokering activity

23 Application for permit

- (1) A broker must apply to the Secretary for a permit to carry out a brokering activity. 5
- (2) The application may be for 1 or more transactions.
- (3) The application must be made in accordance with **section 35**.

24 Criteria for permit

- (1) The Secretary may give a broker a permit to carry out a brokering activity if, having regard to the prescribed criteria and to any other matters that the Secretary considers appropriate, the Secretary is satisfied that the activity— 10
- (a) is consistent with New Zealand's international obligations; and
- (b) would not prejudice the security, defence, or international relations of New Zealand.
- (2) The Secretary may, for the purposes of this section,— 15
- (a) seek and receive any information as the Secretary thinks fit; and
- (b) consider information obtained from any source.

25 Refusal to give permit

If the Secretary refuses to give a broker a permit, the Secretary must give the broker notice of the refusal. 20

26 Duration of permit

- (1) A permit must specify the period, not longer than 3 years, for which the permit is effective.
- (2) The permit ceases to be effective on the earliest of the following: 25
- (a) the end of the period specified in the permit:
- (b) the cancellation or surrender of the permit:
- (c) the date on which the broker's registration ceases to be effective.

27 Secretary may impose conditions on permit

- (1) The Secretary may impose any conditions on a permit that are consistent with or for the purpose of— 30
- (a) the effective administration of this Act:
- (b) the security, defence, or international relations of New Zealand:
- (c) New Zealand's international obligations.

- (2) The Secretary may impose the conditions when giving the permit to the broker or at any other time.

28 Cancellation or surrender of permit

- (1) The Secretary may, by written notice, cancel a permit given under this subpart if— 5
- (a) the Secretary is no longer satisfied of the matters set out in **section 24**; or
 - (b) the broker breaches **section 9, 11, 21, or 36(1)**.
- (2) The cancellation takes effect on the date specified by the Secretary in the notice, which must be a date after the date of that notice. 10
- (3) A broker may surrender a permit by written notice to the Secretary.
- (4) The surrender takes effect on the date specified by the broker in the notice, which must be a date after the date of that notice.

Subpart 4—Civil enforcement

29 Civil enforcement 15

- (1) This subpart applies to a person if,—
- (a) without lawful justification or reasonable excuse, the person has breached **section 9, 11, 21, or 36(1)**; or
 - (b) there are reasonable grounds to believe that the person is likely to breach **section 9, 11, 21, or 36(1)**. 20
- (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 30**:
 - (c) seek an order of the court under **section 31** against the person for breach of an enforceable undertaking: 25
 - (d) seek an injunction under **section 32** against the person.

Compare: 2009 No 35 ss 78, 79

30 Enforceable undertakings

- (1) The Attorney-General may accept a written undertaking given by a person in connection with the person's compliance with **section 9, 11, 21, or 36(1)**. 30
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Attorney-General.

Compare: 2009 No 35 s 81

31 Enforcement of undertakings

- (1) If the Attorney-General considers that a person who gave an undertaking under **section 30** has breached 1 or more of its terms, the Attorney-General may apply to the court for an order under **subsection (2)**.
- (2) The court may, if satisfied that a person has breached 1 or more of the terms of an enforceable 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;
 - (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.

Compare: 2009 No 35 s 82

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32 Injunctions

- (1) The court may grant an injunction restraining a person from breaching **section 9, 11, 21, or 36(1)**.
- (2) The injunction may be an interim one if the court thinks that is desirable, but the court must not—
 - (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.
- (3) The court may rescind or vary an injunction granted under this section.
- (4) **Subsections (1) and (2)** apply whether or not the person—
 - (a) intends to engage again, or to continue to engage, in conduct that breaches **section 9, 11, 21, or 36(1)**;
 - (b) has previously engaged in such conduct.
- (5) The powers in this section do not limit any other powers of the High Court relating to the granting of injunctions.

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

Part 3 Miscellaneous provisions

Extraterritorial application

33 Offences committed outside New Zealand

- (1) Even if the acts or omissions alleged to constitute an offence against any of **sections 10, 12, 13, 22, and 36** occurred wholly outside New Zealand, proceedings may be brought for an offence under that section—
 - (a) if the person to be charged—
 - (i) is a New Zealand citizen; or
 - (ii) is ordinarily resident in New Zealand; or
 - ~~(iii) has been found in New Zealand and has not been extradited; or~~
 - (iv) is an entity incorporated or registered under the law of New Zealand; or
 - (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
 - (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.
- (2) The following sections do not apply in respect of an offence against **section 10, 12, 13, 22, or 36**:
 - (a) section 8 of the Crimes Act 1961 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand);
 - (b) section 400 of the Crimes Act 1961 (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 10, 12, 13, 22, or 36** 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

- (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.
- Compare: 1961 No 43 s 7A

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Attorney-General's consent

34 Attorney-General's consent required

- (1) No charging document may be filed against any person in relation to an offence under this Act unless the Attorney-General consents to the filing of the charging document.
- (2) A person alleged to have committed an offence may be arrested or a warrant for his or her arrest may be issued and executed, and he or she may be remanded in custody or on bail, even though the consent of the Attorney-General has not yet been obtained under **subsection (1)**, but no further or other proceedings may be taken until the consent has been obtained.

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Applications for registration and permits

35 Applications for registration and permits

- (1) An application under **section 14 or 23** must—
 - (a) be in the form approved by the Secretary for the purposes of that section; and
 - (b) contain the information required by the form; and
 - (c) be accompanied by any documents that the form requires; and
 - (d) be accompanied by the fee (if any) prescribed by the regulations.
- (2) The Secretary may request an applicant to provide such additional information as the Secretary considers necessary to enable the Secretary to decide the application.
- (3) The Secretary may approve a form for the purposes of **section 14 or 23**.

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36 False or misleading information

- (1) A person must not, in relation to an application for registration or a permit under this Act, supply any information that the person knows or ought to know is materially false or misleading.
- (2) A person who breaches **subsection (1)** commits an offence and is liable on conviction,—
 - (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or a fine not exceeding \$10,000, or both;
 - (b) in any other case, to a fine not exceeding \$20,000.

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Appeals against decisions about registration and permits

37 Appeals against certain decisions to District Court

- (1) A person who has applied for registration or been registered under **subpart 2 of Part 2** may appeal to the District Court against any decision of the Secretary— 5
 - (a) to refuse to register the person as a broker:
 - (b) to impose a condition on the person's registration:
 - (c) to cancel the person's registration.
- (2) A broker who has applied for a permit or been given a permit under **subpart 3 of Part 2** may appeal to the District Court against any decision of the Secretary— 10
 - (a) to refuse to give the permit:
 - (b) to impose a condition on the permit:
 - (c) to cancel the permit.
- (3) An appeal under **subsection (1) or (2)** must be made within 30 days after the decision appealed against is given, or within any further period that the District Court may allow. 15
- (4) A decision against which an appeal is lodged continues in force unless the District Court orders otherwise.
- (5) An appeal under **subsection (1) or (2)** is by way of rehearing. 20

Regulations and further miscellaneous provisions

38 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: 25
 - (a) prescribing fees or charges for applications under **sections 14 and 23**:
 - (b) prescribing particulars of brokers that must be entered on the public register under **section 17(b)**:
 - (ba) prescribing the form of the annual report to be provided under **section 18A**, the manner in which the annual report must be provided, and the particulars that the annual report must contain: 30
 - (c) prescribing the records to be kept under **section 21**:
 - (d) prescribing matters to which the Secretary must have regard when considering whether to give a permit under **section 24**:
 - (e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 35
- (2) Regulations made under **subsection (1)(a)** may—

- (a) make different provision for different cases on any differential basis:
- (b) prescribe any of the following:
 - (i) the method by which the fees or charges are to be assessed:
 - (ii) the persons liable to pay the fees or charges:
 - (iii) when the fees or charges must be paid: 5
 - (iv) circumstances in which the fees or charges may be refunded, re-mitted, or waived (wholly or partly).

39 Disclosure of information to overseas authority

- (1) The Secretary may disclose any information held by the Secretary to an overseas authority for the purpose of assisting the authority to carry out its functions related to, or involving,— 10
 - (a) the regulation or monitoring of brokering activity:
 - (b) the prevention, detection, investigation, prosecution, or punishment of offences that are, or if committed in New Zealand would be, offences under this Act. 15
- (2) Information may be disclosed under this section if—
 - (a) the information is disclosed subject to conditions stating—
 - (i) the use that the overseas authority may make of the information; and
 - (ii) either— 20
 - (A) that the overseas authority must not disclose the information to any other agency, body, or person; or
 - (B) that the overseas authority may disclose the information, or part of it, to a specified agency, body, or person subject to certain conditions; and 25
 - (b) the Secretary makes and keeps a record of—
 - (i) the information that was disclosed; and
 - (ii) the overseas authority or authorities to which it was disclosed; and
 - (iii) the conditions subject to which it was disclosed.
- (3) In this section, **overseas authority** means an overseas agency, body, or person. 30
- (4) This section does not prevent or limit any disclosure of information that is required or authorised by or under any law, or under any treaty, agreement, or arrangement concluded by the Government of New Zealand.

40 Register of brokers

- (1) The Secretary must keep and maintain a register of brokers. 35
- (2) The Secretary must ensure that the register is available to the public on an Internet site maintained by or on behalf of the Secretary.

- (3) The register must show in relation to each registered broker—
 - (a) the information described in **section 17(b)**; and
 - (b) a statement as to whether the broker’s registration is subject to any conditions.
- (4) Despite **subsection (3)(a)**, the Secretary may omit or remove any particular prescribed in regulations made under **section 17(b)(iii)** from a public register if—
 - (a) the person requests the Secretary to do so on the basis that the particular is personal information; and
 - (b) the Secretary considers that the disclosure of the information on the public register would constitute an unreasonable interference with the privacy of any individual.

41 Consequential amendment

Amend the enactment specified in **Schedule 2** as set out in that schedule.

Schedule 1
Transitional, savings, and related provisions

s 7

Part 1
Provisions relating to this Act as enacted

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There are no transitional, savings, or related provisions relating to this Act as enacted.

Schedule 2

Consequential amendment

s 41

Privacy Act 1993 (1993 No 28)

In Schedule 2, Part 1, after the item relating to the Births, Deaths, Marriages, and Relationships Registration Act 1995, insert: 5

Brokering (Weapons and Related Items) Control Act **2017** **Section 41 40**

Legislative history

27 June 2017
15 August 2017

Introduction (Bill 280–1)
First reading and referral to Foreign Affairs, Defence and Trade Committee