

Crimes (Countering Foreign Interference) Amendment Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Crimes (Countering Foreign Interference) Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

Introduction

The Crimes (Countering Foreign Interference) Amendment Bill would amend the Crimes Act 1961. It would strengthen the law to better prevent and respond to foreign interference intended to harm New Zealand. Foreign interference involves a foreign state, either directly or indirectly, attempting to interfere with New Zealand's interests in a secretive, coercive, or dishonest way. Foreign interference may affect national security, the economy, elections, or individuals and communities.¹

The bill would introduce new offences related to foreign interference into the Crimes Act. It would be an offence if a person:

- engages in covert, deceptive, coercive, or corruptive conduct for, or on behalf of, a foreign power, to intentionally compromise a protected New Zealand interest, or is reckless as to whether the conduct is likely to compromise such an interest

¹ The Ministry for Ethnic Communities has provided. To view this information, see: The Government is changing the law to protect New Zealand from foreign interference | Ministry for Ethnic Communities.

- commits an imprisonable offence to intentionally benefit a foreign power, or is reckless as to whether committing the offence is likely to provide such benefit.

The bill would require the Attorney-General to consent before proceedings can be brought for these offences.

The bill would also introduce new offences to address gaps in the criminal liability for espionage, treason, and inciting to mutiny. It would make it an offence for a person who owes allegiance to New Zealand's Sovereign to assist another person to do, or not do, a relevant act, when certain conditions are met. The bill would also modify and extend existing offences related to espionage and wrongful communication, retention, or copying of information held by certain public agencies.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Owing allegiance to the Sovereign in right of New Zealand

Clause 4 would insert new section 2A into the Crimes Act. Section 2 of the Act provides definitions for how terms used in the Act should be interpreted. Proposed new section 2A would introduce a definition for a "person who owes allegiance to the Sovereign in right of New Zealand". This definition would only apply for the purposes of interpreting a small number of offences in the Crimes Act. It would not be an exhaustive definition. We propose several changes to this clause to make the definition, and its legal status, clearer. We discuss these recommendations below.

Clarifying the effect of dual or multiple citizenship on owing allegiance

Proposed new section 2A sets out circumstances in which a person would owe allegiance to the Sovereign in right of New Zealand. As introduced, new section 2A does not make clear how holding dual or multiple citizenship would affect whether a person owes allegiance to the Sovereign.

The policy intent is that a person outside New Zealand would owe allegiance to the Sovereign if they were a New Zealand citizen or have taken the oath of allegiance. This would be regardless of whether they are also a citizen of, or have taken an oath of allegiance to, another country. We recommend amending new section 2A(4) to make this clear.

Replacing the term "enemy alien"

Proposed new section 2A includes reference to the term "enemy alien". It sets out circumstances in which a person would not be considered to owe allegiance to the Sov-

foreign if they were an “enemy alien”. Neither the Act nor the proposed section includes a definition for this term.

We note that while the term “enemy alien” has been used in other Acts, it is not explicit what is meant by this reference.² We consider that the language should be clearer. This would make the definition of when a person who owes allegiance to the Sovereign easier to interpret. We recommend replacing the term “enemy alien” with the term “citizen of a State that is at war with New Zealand” throughout new section 2A.

Making it a question of law whether a person owes allegiance

One submitter, the New Zealand Law Society, suggested that whether a person owes allegiance to the Sovereign should be made a question of law. A question of law is an issue that must be assessed by a judge. It is distinct from a matter of fact, which is determined by a jury.

In its submission, The New Zealand Law Society expressed the view that it would be more appropriate for a judge to decide whether a defendant owes allegiance to New Zealand, rather than a jury. The Law Society considers that this would support more consistent decision-making. We agree that this matter should be made a question of law. We recommend including subsections (4A) and (4B) in new section 2A accordingly.

Amendments to offence provisions

Clause 10 would insert new sections 78AAA and 78AAB into the Act to create new offences related to foreign interference.

New section 78AAA would make it an offence to engage in covert, deceptive, coercive, or corruptive conduct for or on behalf of a foreign power. The offender must either have intended to compromise a protected New Zealand interest or been reckless as to whether the conduct was likely to compromise such an interest.

New section 78AAB would make it an offence to commit any imprisonable offence intending to, or being reckless as to whether the offending is likely to, provide a relevant benefit to a foreign power.

We recommend several changes to these proposed new sections, to improve their clarity or to better reflect the bill’s policy intent. We discuss these recommendations below.

Safeguards for protests, advocacy, and industrial action

Some submitters expressed concerns that the proposed offences in new sections 78AAA and 78AAB might risk undermining fundamental rights, including the right

² For example, the term “enemy alien” is in the Births, Deaths, Marriages, and Relationships Act 2021 and the Citizenship Act 1977.

to peaceful protest. We note that the wording of the new offences is purposely broad. The offences are intended to cover a wide range of foreign interference activity that has been identified internationally. However, we consider that the bill should make clear that engaging in protest, advocacy, or industrial action would not, by itself, be criminalised under new sections 78AAA and 78AAB. We recommend inserting new sections 78AAA(4A)(b) and 78AAB(4A) to specify this, to avoid any doubt.

Amending the definition of “improper conduct”

Proposed new section 78AAA(6) includes definitions for certain terms used in the section. It defines “improper conduct” as conduct that is of a covert, deceptive, coercive, or corruptive nature. Under this section, conduct that is of a covert nature would include concealing a person’s identity or actions, obscuring an association or relationship, or collecting or sharing information about a person without consent. It would exclude any conduct lawfully carried out in the ordinary course of a business, profession, or occupation (for example, protecting journalists’ sources).

Some submitters were concerned that the definition of “improper conduct” might capture some activity that is routinely and lawfully carried out. For example, submitters mentioned that it was unclear how lawful conduct carried out as part of an unpaid position would be treated. Submitters also pointed out that many digital communications platforms have some form of encryption, and wondered whether use of these platforms would fall within the definition.

We consider that the definition of “improper conduct” should be clearer. We recommend amending proposed section 78AAA(6) accordingly. We also recommend inserting new section 78AAA(4A)(a) to specify that it would not, in itself, be improper conduct to protect information in the ordinary course of a paid or unpaid business, profession, or occupation. We recommend inserting new section 78AAA(4B) to provide examples of what activity this could include, such as protecting trade secrets or commercially sensitive information, including by using encrypted communications.

Clarifying the scope of committing an imprisonable offence to benefit a foreign power

Under new section 78AAB, the proposed offence would only apply if a person committed an imprisonable offence with the intention of benefitting a foreign power, or was reckless as to whether committing the offence is likely to provide such benefit. Some submitters expressed concern that the wording of this proposed offence is too broad and might inadvertently criminalise conduct that it is not intended to.

We recommend amending proposed section 78AAB so that the offence would only apply if a person committed an imprisonable offence “for or on behalf of a foreign power”. We also recommend inserting new section 78AAB(4B) to define this. It would be defined as including committing an imprisonable offence:

- at the instigation, direction, or under the supervision of a foreign power
- in collaboration or with assistance, funding, or agreement from a foreign power.

Our proposed wording would require a clearer link between the person committing the offence and a foreign power.

Clarifying the meaning of providing relevant benefit to a foreign power

Proposed new section 78AAB(5) would define the term “to provide relevant benefit to a foreign power” for the purposes of interpreting section 78AAB. We consider that this definition could be made clearer to more accurately reflect all types of activity that are intended to be regarded as providing relevant benefit to a foreign power.

As introduced, subsection (5)(b) specifies that providing relevant benefit may include enhancing the “political, economic, or military capability or influence” of a foreign power. We recommend amending this to instead read: “political or economic influence or the military or technological capability”. This would ensure that enhancing a foreign power’s technological capability is included in the definition. It would also more clearly distinguish between a foreign power’s influence and capability.

Amendments to other Acts

Clause 16 would make minor and consequential amendments to Acts specified in the Schedule of the bill. As introduced, the Schedule includes amendments to 13 Acts.

Amendments to eight Acts included in the Schedule as introduced would set up an exclusion so a person could still be prosecuted or compelled to give evidence for the offences in new sections 78AAA and 78AAB, even if they have general immunity. This is consistent with existing provisions for other serious offences in the Crimes Act, including espionage. Following the bill’s introduction, it has been identified that several additional Acts need to be amended to make this change, and some other consequential changes. Accordingly, we recommend amending the Schedule to include amendments to the following Acts:

- the Children and Young People’s Commission Act 2022
- the Commerce Act 1986
- the Fair Trading Act 1986
- the Financial Markets Authority Act 2011
- the Intelligence and Security Act 2017
- the Oranga Tamariki Act 2019
- the Privacy Act 2020
- the Radiocommunications Act 1989
- the Reserve Bank of New Zealand Act 2021
- the Takeovers Act 1993.

The Schedule, as introduced, would also amend the Bail Act 2000. Section 9 of the Bail Act provides that a person charged with espionage or treason cannot be granted bail, unless ordered by the Governor-General or a High Court Judge. The bill would amend section 9 to include the offences in new sections 78AA and 78AAA in this

provision. This means that a person charged with either of these offences would also have their access to bail restricted.

We consider that the offence in section 78AA (which relates to wrongful communication, retention, or copying of classified information) should not be included in this provision. However, we consider that the new offence in new section 78AAB (which relates to committing an imprisonable offence to benefit a foreign power) should be included. We recommend amending section 9 of the Bail Act, by means of amending the Schedule, to provide for this.

Green Party of Aotearoa New Zealand differing view

The Green Party does not support this bill. While it is important to ensure New Zealand is protected from genuine threats of foreign interference, this legislation does not ensure sufficient protections for civil liberties and democratic freedoms. We share the concerns by submitters that this legislation could be used against environmental advocates, trade unions, human rights groups, and indigenous peoples.

We consider that the new offences created represent state overreach and a significant threat to civil liberties, particularly the right to peacefully protest and organise, the right to privacy, and the right to voice one's own personal political opinions.

References to "foreign power" and what it means to act "for or on behalf of" a foreign power are too broad and have not addressed the concerns of many submitters. Intelligence agencies often highlight concerns about foreign influence from countries such as China and Russia, but there is no clarity on how this bill will address, if at all, the influence of Five Eyes countries and the additional complexities of navigating those relationships. There is also insufficient clarity on how this would address interference from powerful multi-national corporations who might owe no allegiance to any foreign power.

References to benefiting a foreign power are also too subjective and broad. The implications of this are numerous; in particular, the right to peaceful protest could be threatened by accusations of protest movements being in service of a foreign power.

We are also concerned that consultation with Māori was inadequate, particularly given submitters' concerns about the Crown's poor track record in this area, and the risk that this legislation could be used to unfairly target Māori, especially those with aspirations for Tino Rangatiratanga and Mana Motuhake.

Appendix

Committee process

The Crimes (Countering Foreign Interference) Amendment Bill was referred to this committee on 19 November 2024.

We called for submissions on the bill with a closing date of 16 January 2025. We received and considered 705 submissions. We heard oral evidence from 49 submitters.

Advice on the bill was provided by the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Hon Andrew Bayly (member from 9 April 2025 and Chairperson from 10 April 2025)

Hon James Meager (member and Chairperson until 10 April 2025)

Hon Ginny Andersen

Jamie Arbuckle

Carl Bates (from 29 January 2025)

Cameron Brewer (until 29 January 2025)

Tākuta Ferris

Paulo Garcia (until 29 January 2025)

Dr Tracey McLellan (until 14 May 2025)

Rima Nakhle

Tamatha Paul (until 29 January 2025)

Tom Rutherford (from 29 January 2025)

Todd Stephenson

Vanushi Walters (from 14 May 2025)

Hon Dr Duncan Webb

Dr Lawrence Xu-Nan (from 29 January 2025)

Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Crimes (Countering Foreign Interference) Amendment
Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Paul Goldsmith

Crimes (Countering Foreign Interference) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Crimes (Countering Foreign Interference) Amendment Act **2024**.
- 2 Commencement** 5
This Act comes into force on the day after Royal assent.
- Part 1**
Amendments to Crimes Act 1961
- 3 Principal Act** 10
This Part amends the Crimes Act 1961.
- 4 New section 2A inserted (Meaning of person who owes allegiance to the Sovereign in right of New Zealand)**
After section 2, insert:

2A Meaning of person who owes allegiance to the Sovereign in right of New Zealand

Relationship between this section and common law

- (1) For the purposes of this Act only, this section sets out circumstances in which a person owes allegiance to the Sovereign in right of New Zealand. 5
- (2) However,—
- (a) this section is not an exhaustive code of the law relating to the circumstances in which a person owes allegiance to the Sovereign in right of New Zealand; and
- (b) a person is not excluded from owing allegiance to the Sovereign in right of New Zealand under the common law just because they do not owe allegiance under this section. 10

Persons in New Zealand

- (3) A person who is in New Zealand owes allegiance to the Sovereign in right of New Zealand unless 1 or more of the following apply: 15
- (a) the person enjoys immunity under Article 31 or 37 of the Vienna Convention on Diplomatic Relations by virtue of the Diplomatic Privileges and Immunities Act 1968:
- (b) the person enjoys immunity under Article 43 of the Vienna Convention on Consular Relations by virtue of the Consular Privileges and Immunities Act 1971: 20
- (c) the person ~~is an enemy alien who~~—
- (iaa) is a citizen of a State that is at war with New Zealand; and
- (i) is not a citizen of New Zealand; and
- (ii) is not bound by the oath of allegiance: 25
- (d) the person—
- (i) is a child of a person in New Zealand who meets the conditions in **paragraph (c)**; and
- (ii) is under the age of 18 years.

Persons outside New Zealand 30

- (4) A person who is outside New Zealand owes allegiance to the Sovereign in right of New Zealand if 1 or more of the following apply:
- (a) the person is a citizen of New Zealand (whether or not the person is also a citizen of any other State):
- (b) the person is bound by the oath of allegiance (whether or not the person is also bound by any other oath): 35
- (c) the person—

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(i) is not an enemy alien a citizen of a State that is at war with New Zealand; and (ii) has previously owed allegiance to the Sovereign in right of New Zealand (whether under this section or under the common law); and (iii) has family or property in New Zealand that demonstrates an enduring connection to New Zealand.	5
<i>Interpretation</i>	
(4A) It is a question of law whether a person owes allegiance to the Sovereign in right of New Zealand for the purposes of an offence under this Act.	10
(4B) Where the decision on a question of law under subsection (4A) depends on any questions of fact, the prosecutor or the defendant may adduce, and the Judge may hear, in addition to the evidence heard by the jury, any evidence relevant to those questions of fact.	
(5) In this section, the oath of allegiance means the oath of allegiance referred to in the Oaths and Declarations Act 1957 and includes any oath substituted for that oath or any affirmation or declaration to the same effect as that oath.	15
5 Section 7A amended (Extraterritorial jurisdiction in respect of certain offences with transnational aspects)	
In section 7A(1), after “or an offence against”, insert “ section 78AAA, section 78AAB, ”.	20
5A Section 7B amended (Attorney-General’s consent required where jurisdiction claimed under section 7A)	
After section 7B(3), insert:	
(4) <u>See section 78B about Attorney-General consent to proceedings for an offence against section 78AAA or section 78AAB (whether jurisdiction is claimed by virtue of section 7A or otherwise).</u>	25
6 Section 24 amended (Compulsion)	
After section 24(2)(a), insert:	
(aa) section 78AAA (Improper conduct for or on behalf of foreign power):	30
7 Section 69 amended (Party to any other crime outside New Zealand)	
(1) After section 69(1), insert:	
(1A) A person who owes allegiance to the Sovereign in right of New Zealand commits an offence if the person, outside New Zealand, aids, incites, counsels, or procures the doing or omission outside New Zealand, by any person not owing allegiance to the Sovereign in right of New Zealand, of any act which, if done or omitted outside New Zealand by a person owing such allegiance, would be any of the crimes mentioned in subsection (1).	35

(1B)	A person who commits an offence against subsection (1A) is liable to imprisonment for a term not exceeding 14 years.	
(2)	In section 69(2), replace “any such crime as aforesaid” with “any of the crimes mentioned in subsection (1)”.	
(3)	After section 69(2), insert:	5
(2A)	A person who owes allegiance to the Sovereign in right of New Zealand commits an offence if the person, outside New Zealand, incites, counsels, or attempts to procure the doing or omission outside New Zealand of any act which, if done or omitted in New Zealand, would be any of the crimes mentioned in subsection (1), when that act is not in fact done or omitted.	10
(2B)	A person who commits an offence against subsection (2A) is liable to imprisonment for a term not exceeding 10 years.	
8	New section 69A inserted (Party to certain acts or omissions in New Zealand)	
	After section 69, insert:	15
69A	Party to certain acts or omissions in New Zealand	
	<i>Relevant act done or omitted</i>	
(1)	A person who owes allegiance to the Sovereign in right of New Zealand commits an offence if—	
(a)	the person, in or outside New Zealand, aids, abets, incites, counsels, or procures a person who does not owe such allegiance to do or omit a relevant act in New Zealand; and	20
(b)	the relevant act is in fact done or omitted.	
(2)	A person who commits an offence against subsection (1) is liable to imprisonment for a term not exceeding 14 years.	25
	<i>Relevant act not done or omitted</i>	
(3)	A person who owes allegiance to the Sovereign in right of New Zealand commits an offence if—	
(a)	the person, in or outside New Zealand, incites, counsels, or attempts to procure a person who does not owe such allegiance to do or omit a relevant act in New Zealand; and	30
(b)	the relevant act is not in fact done or omitted.	
(4)	A person who commits an offence against subsection (3) is liable to imprisonment for a term not exceeding 10 years.	
	<i>Interpretation</i>	35
(5)	In this section, relevant act means an act which, if done or omitted in New Zealand by a person who owes allegiance to the Sovereign in right of New Zealand, would be an offence against—	

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Part 1 cl 9	
(a) section 73 (treason); or	
(b) section 77 (inciting to mutiny); or	
(c) section 78 (espionage).	
9 Section 78 amended (Espionage)	
In section 78, insert as subsection (2):	5
(2) In this section,—	
document has the meaning given in section 217	
information includes information about military tactics, techniques, or procedures.	
10 New sections 78AAA and 78AAB inserted	10
After section 78, insert:	
78AAA Improper conduct for or on behalf of foreign power <u>to compromise protected New Zealand interest</u>	
<i>Intentional conduct</i>	
(1) A person commits an offence if—	15
(a) the person engages in improper conduct for or on behalf of a foreign power; and	
(b) the person knows, or ought to know, that they are engaging in the conduct for or on behalf of a foreign power; and	
(c) the person engages in the conduct intending to compromise a protected New Zealand interest.	20
(2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.	
<i>Reckless conduct</i>	
(3) A person commits an offence if—	25
(a) the person engages in improper conduct for or on behalf of a foreign power; and	
(b) the person knows, or ought to know, that they are engaging in the conduct for or on behalf of a foreign power; and	
(c) the person engages in the conduct being reckless as to whether doing so is likely to compromise a protected New Zealand interest.	30
(4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 10 years.	
<i>Interpretation</i>	
(4A) <u>To avoid doubt,—</u>	35

- (a) the fact that a person protects information for a lawful purpose in the ordinary course of business, a profession, or an occupation, whether paid or unpaid, is not, by itself, a sufficient basis for inferring that the person is engaging in improper conduct:
- (b) the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person is— 5
- (i) intending to compromise a protected New Zealand interest; or
- (ii) reckless as to whether the person’s conduct is likely to compromise a protected New Zealand interest. 10
- (4B) Examples of conduct contemplated by **subsection (4A)(a)** include the protection of trade secrets, commercially sensitive information, personal information, journalists’ sources, or legally privileged communications, including by way of encryption.
- (5) In this section, conduct that a person engages in **for or on behalf of a foreign power**— 15
- (a) includes conduct that is—
- (i) instigated, directed, or supervised by a foreign power; or
- (ii) undertaken in collaboration with, or with the assistance, funding, or agreement of, a foreign power; but 20
- (b) excludes conduct that constitutes the lawful performance of the person’s functions or duties as an employee, contractor, authorised representative, or agent of the Government of New Zealand.
- (6) In this section,— 25
- foreign power** means any of the following:
- (a) a foreign government (as defined in section 105C):
- (b) a foreign public agency (as defined in section 105C):
- (c) a foreign public enterprise (as defined in section 105C):
- (d) a foreign public official (as defined in section 105C, but as if the references to a public international organisation were removed): 30
- (e) a political party within a foreign country (as defined in section 105C) that constitutes, forms part of, or represents a foreign government (as defined in section 105C):
- (f) a person in their capacity as a holder of a political or official post if— 35
- (i) the person holds that post as a result of, or in the course of, their membership of a political party referred to in **paragraph (e)**; or
- (ii) the person is subject to the direction or control of, or is significantly influenced by, a political party referred to in **paragraph (e)** in exercising the functions of that post:

- (g) a company, body, organisation, or association whose main purpose is to support a political party referred to in **paragraph (e)**

improper conduct means conduct that includes any of the following:

- (a) ~~conduct that is of a covert nature,—~~
- (i) ~~including—~~ 5
- (A) ~~concealing a person's actions or identity;~~
- (B) ~~obscuring the existence of an association or relationship;~~
- (C) ~~collecting or sharing information about a person without their knowledge or consent; but~~
- (ii) ~~excluding any such conduct that is carried out in the ordinary course of business, a profession, or an occupation for a lawful purpose (for example, the protection of trade secrets, commercially sensitive information, journalists' sources, or legally privileged communications);~~ 10
- (a) conduct that is of a covert nature, which may include— 15
- (i) concealing a person's actions or identity;
- (ii) obscuring the existence of an association or relationship;
- (iii) collecting or sharing information about a person without their knowledge or consent;
- (b) ~~conduct that is of a deceptive nature, including which may include—~~ 20
- (i) misrepresenting or obfuscating a person's purpose in acting or not acting:
- (ii) failing to disclose the consequences of acting or not acting in accordance with any representation:
- (iii) making a false representation: 25
- (iv) omitting any material particular in dealing with another person:
- (c) ~~conduct that is of a coercive nature, including which may include—~~
- (i) using intimidating, threatening, manipulative, or exploitative behaviour against another person:
- (ii) enabling the denial or restriction of access to property or services that another person would otherwise be entitled to access: 30
- (d) ~~conduct that is of a corruptive nature, including which may include abus-~~
~~ing a person's position or authority in a manner that enables the person to—~~
- (i) exert undue influence or control over another person: 35
- (ii) make a monetary or personal gain

protected New Zealand interest means any of the following:

- (a) the security or defence of New Zealand:

- (b) the economic well-being of New Zealand:
- (c) the international relations of New Zealand:
- (d) the functioning of the executive, judiciary, or legislature of New Zealand:
- (e) the exercise or performance of any public function, duty, or power conferred or imposed on a person or body by or pursuant to the law of New Zealand: 5
- (f) the fair and impartial conduct of any election, poll, or referendum under the law of New Zealand:
- (g) the ability of any person to exercise in New Zealand any human, civil, political, or democratic right recognised under the law of New Zealand: 10
- (h) the safety or security of—
 - (i) any person in New Zealand; or
 - (ii) any citizen of New Zealand, whether or not that person is in New Zealand; or 15
 - (iii) any person ordinarily resident in New Zealand, whether or not that person is in New Zealand.

78AAB Commission of imprisonable offence ~~to provide relevant benefit to foreign power~~ for or on behalf of foreign power to provide relevant benefit

Intentional conduct 20

- (1) A person commits an offence if the person commits any imprisonable offence for or on behalf of a foreign power intending to provide a relevant benefit to a foreign power.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 10 years. 25

Reckless conduct

- (3) A person commits an offence if the person commits any imprisonable offence for or on behalf of a foreign power being reckless as to whether doing so is likely to provide a relevant benefit to a foreign power.
- (4) A person who commits an offence against **subsection (3)** is liable on conviction to imprisonment for a term not exceeding 7 years. 30

Interpretation

- (4A) To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person is— 35
 - (a) intending to provide a relevant benefit to a foreign power; or
 - (b) reckless as to whether the person's conduct is likely to provide a relevant benefit to a foreign power.

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(4B)	<u>In this section, committing an imprisonable offence for or on behalf of a foreign power includes committing the offence—</u> (a) <u>at the instigation, at the direction, or under the supervision of a foreign power; or</u> (b) <u>in collaboration with, or with the assistance, funding, or agreement of, a foreign power.</u>
(5)	In this section,— foreign power has the meaning given <u>same meaning as</u> in section 78AAA to provide a relevant benefit to a foreign power means 1 or more of the following: (a) to support the intelligence activities of a foreign power: (b) to enhance the political, economic, or military capability or influence <u>economic influence or the military or technological capability</u> of a foreign power: (c) to advance the coercive influence of a foreign power over persons in or outside New Zealand.
11	Section 78AA amended (Wrongful communication, retention, or copying of classified information) In section 78AA(3), replace “official information” with “relevant information” in each place.
12	Section 78A amended (Wrongful communication, retention, or copying of official information) (1) In the heading to section 78A, replace “official information” with “relevant information”. (2) In section 78A(1)(a), replace “official information” with “information that is, or was, relevant information”. (3) In section 78A(2), repeal the definition of department. (4) In section 78A(2), insert in their appropriate alphabetical order: document has the meaning given in section 217 information includes information about military tactics, techniques, or procedures local authority means a local authority or public body named or specified in Schedule 1 or 2 of the Local Government Official Information and Meetings Act 1987 and includes— (a) any committee or subcommittee or standing committee or special committee or joint standing committee or joint special committee that the local authority is empowered to appoint under its standing orders or

- rules of procedure or under any enactment or Order in Council constituting the local authority or regulating its proceedings; and
- (b) a committee of the whole local authority
- public service agency** means a department, departmental agency, interdepartmental executive board, or interdepartmental venture named in Parts 1 to 1C of Schedule 1 of the Ombudsmen Act 1975 5
- relevant information**—
- (a) means any information held by—
- (i) a public service agency; or
 - (ii) a local authority; or 10
 - (iii) a relevant office; or
 - (iv) a Minister of the Crown in their official capacity; or
 - (v) an organisation; or
 - (vi) an officer or employee of any public service agency, local authority, relevant office, or organisation in their capacity as such an officer or employee or in their capacity as a statutory officer; or 15
 - (vii) an independent contractor engaged by any public service agency, local authority, relevant office, Minister of the Crown, or organisation in their capacity as such contractor; and
- (b) includes any information held outside New Zealand by any branch or post of— 20
- (i) a public service agency; or
 - (ii) a local authority; or
 - (iii) a relevant office; or
 - (iv) an organisation; and 25
- (c) includes any information held by an unincorporated body (being a board, council, committee, subcommittee, or other body)—
- (i) that is established for the purpose of assisting or advising, or performing functions connected with, any public service agency, local authority, relevant office, Minister of the Crown, or organisation; and 30
 - (ii) that is so established in accordance with the provisions of any enactment or by any public service agency, local authority, relevant office, Minister of the Crown, or organisation 35
- relevant office** means—
- (a) the Inspector-General of Intelligence and Security, the Deputy Inspector-General of Intelligence and Security, or any employee of the Inspector-General of Intelligence and Security, acting in that capacity:

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(b) the Controller and Auditor-General, the Deputy Controller and Auditor-General, or any employee or appointed auditor of the Controller and Auditor-General, acting in that capacity:	
(c) any Ombudsman appointed under the Ombudsmen Act 1975 or any officer or employee of the Chief Ombudsman, acting in that capacity:	5
(d) the Office of the Clerk of the House of Representatives:	
(e) the Independent Police Conduct Authority	
(5) In section 78A(2), definition of object , paragraph (a), replace “department” with “public service agency”.	
(6) In section 78A(2), definition of object , after paragraph (a), insert:	10
(aa) a local authority; or	
(ab) a relevant office; or	
(7) In section 78A(2), definition of object , paragraphs (d) to (g), replace “department” with “public service agency or local authority or relevant office” in each place.	15
(8) In section 78A(2), repeal the definition of official information .	
13 Section 78B amended (Consent of Attorney-General to proceedings in relation to espionage or wrongful communication, retention, or copying of classified information or official information)	
(1) In the heading to section 78B, replace “ espionage or wrongful communication, retention, or copying of classified information or official information ” with “ certain offences ”.	20
(2) In section 78B(1)(a) to (c), after “78,” insert “ 78AAA(1), 78AAA(3), 78AAB(1), 78AAB(3) ,”.	
14 Section 105A amended (Corrupt use of official information)	25
In section 105A, after “information”, insert “(including information about military tactics, techniques, or procedures)”.	
15 Section 168 amended (Further definition of murder)	
After section 168(2)(a), insert:	
(aa) section 78AAA (Improper conduct for or on behalf of foreign power):	30

Part 2

Minor and consequential amendments to other Acts

16 Minor and consequential amendments to other Acts

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

Schedule

Minor and consequential amendments to other Acts

s 16

Armed Forces Discipline Act 1971 (1971 No 53)

In section 25, replace “official information” with “relevant information” in each place. 5

Bail Act 2000 (2000 No 38)

In the heading to section 9, replace “**treason or espionage**” with “**certain offences**”.

In section 9, after “(which relates to espionage)”, insert “or against **section 78AAA** of the Crimes Act 1961 (which relates to improper conduct for or on behalf of a foreign power to compromise a protected New Zealand interest) or against ~~section 78AA of the Crimes Act 1961 (which relates to wrongful communication, retention, or copying of classified information)~~ **section 78AAB** of the Crimes Act 1961 (which relates to the commission of an imprisonable offence for or on behalf of a foreign power to provide a relevant benefit)”.

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Children and Young People’s Commission Act 2022 (2022 No 44)

In section 36(3)(a), after “section 78.”, insert “**78AAA, 78AAB.**”.

Commerce Act 1986 (1986 No 5)

In section 106(3)(a), (b), and (c), after “section 78”, insert “or **section 78AAA or section 78AAB** or section 78AA”.

20

Criminal Procedure Act 2011 (2011 No 81)

In Schedule 1, Part 1, insert in their appropriate order:

Section 69(1A)	Person owing allegiance being party to crime of treason, inciting to mutiny, or espionage outside New Zealand
Section 69(2A)	Person owing allegiance inciting treason, mutiny, or espionage outside New Zealand (not committed)
Section 69A(1)	Person owing allegiance being party to crime of treason, inciting to mutiny, or espionage in New Zealand
Section 69A(3)	Person owing allegiance inciting treason, mutiny, or espionage in New Zealand (not committed)
Section 78AAA(1)	Improper conduct for or on behalf of foreign power to <u>compromise protected New Zealand interest</u> (with intent)
Section 78AAA(3)	Improper conduct for or on behalf of foreign power to <u>compromise protected New Zealand interest</u> (with recklessness)
Section 78AAB(1)	Commission of imprisonable offence to provide <u>relevant benefit to foreign power</u> for or on behalf of

Criminal Procedure Act 2011 (2011 No 81)—continued

Section 78AAB(3)	<u>foreign power to provide relevant benefit</u> (with intent) Commission of imprisonable offence to provide relevant benefit to foreign power <u>for or on behalf of foreign power to provide relevant benefit</u> (with recklessness)
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Environment Act 1986 (1986 No 127)

In section 22A(3)(a), (b), and (c), after “section 78,”, insert “**78AAA, 78AAB,**”.

Fair Trading Act 1986 (1986 No 121)

In section 48(3)(a), (b), and (c), after “section 78,”, insert “or **section 78AAA or section 78AAB** or section 78AA”.

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Financial Markets Authority Act 2011 (2011 No 5)

In section 22(3)(a), after “section 78,”, insert “**78AAA, 78AAB,**”.

In section 65(2)(c)(ii), after “section 78,”, insert “**78AAA, 78AAB, 78AA,**”.

Health and Disability Commissioner Act 1994 (1994 No 88)

In section 65(3)(a) and (b), after “section 78,”, insert “**78AAA, 78AAB,**”.

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Human Rights Act 1993 (1993 No 82)

In section 130(3)(a) and (b), after “section 78,”, insert “**78AAA, 78AAB,**”.

Independent Police Conduct Authority Act 1988 (1988 No 2)

In section 33(2)(a), (b), and (c), after “section 78,”, insert “**78AAA, 78AAB,**”.

Inspector-General of Defence Act 2023 (2023 No 42)

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In section 37(3)(b), after “section 78,”, insert “**78AAA, 78AAB,**”.

In section 55(2)(b), after “section 78,”, insert “**78AAA, 78AAB,**”.

Intelligence and Security Act 2017 (2017 No 10)

In section 183(2)(b), after “section 78,”, insert “**78AAA, 78AAB,**”.

In Schedule 3, clause 12(3)(b), after “section 78,”, insert “**78AAA, 78AAB,**”.

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Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (2004 No 38)

In section 19(2)(a), replace “department” with “public service agency”.

In section 19(2)(a), after “sections 78,”, insert “, 78AA,”.

In Schedule 2, clause 4(4)(a) and (b), after “section 78,”, insert “**78AAA, 78AAB,**”.

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Ombudsmen Act 1975 (1975 No 9)

In section 26(2)(a), (b), and (c), after “section 78,”, insert “**78AAA, 78AAB,**”.

Oranga Tamariki Act 1989 (1989 No 24)

In Schedule 1A, after the item relating to section 78 of the Crimes Act 1961, insert:

Improper conduct for or on behalf of foreign power to compromise protected New Zealand interest Crimes Act 1961, **section 78AAA**

Privacy Act 2020 (2020 No 31)

In section 90(3)(a), after “section 78,”, insert “**78AAA, 78AAB,**”.

Radiocommunications Act 1989 (1989 No 148)

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In section 72(2)(a), (b), and (c), after “section 78”, insert “or **section 78AAA or section 78AAB** or section 78AA”.

Reserve Bank of New Zealand Act 2021 (2021 No 31)

In section 181(2)(a), after “section 78,”, insert “**78AAA, 78AAB,**”.

In section 182(3)(a), after “section 78,”, insert “**78AAA, 78AAB,**”.

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Search and Surveillance Act 2012 (2012 No 24)

In Part 2, in the subpart 8 heading, after “section 78”, insert “, **78AAA, 78AAB,**”.

In the heading to section 25, after “**section 78**”, insert “, **78AAA, 78AAB,**”.

In section 25(2)(a), after “section 78”, insert “, **78AAA, 78AAB,**”.

Summary Offences Act 1981 (1981 No 113)

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In the cross-heading above section 20A, replace “*Official*” with “*Relevant*”.

In the heading to section 20A, replace “**official**” with “**relevant**”.

In section 20A(1), replace “official” with “relevant” in each place.

Takeovers Act 1993 (1993 No 107)

In section 11(3)(a), (b), and (c), after “section 78”, insert “or **section 78AAA or section 78AAB** or section 78AA”.

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In section 33D(2)(c)(i), (ii), and (iii), after “section 78,”, insert “**78AAA, 78AAB,**”.

Legislative history

14 November 2024
19 November 2024

Introduction (Bill 93–1)
First reading and referral to Justice Committee