



1 March 2022

Minister of Foreign Affairs

For action by

2 March 2022

Fast-track legislative options to respond to Russian aggression against Ukraine

BRIEFING Overview Submission

PURPOSE To provide advice on fast-track legislative options to further respond to the current Russia/Ukraine crisis

Tukunga tūtohua – Recommended referrals

Prime Minister	For information by	2 March 2022
Attorney-General	For information by	2 March 2022

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Andrew Williams	Unit Manager	Legal Division	s9(2)(a)
Victoria Hallum	Divisional Manager and International Legal Adviser	Legal Division	

Mā te Tari Minita e whakakī – Minister's Office to complete

 Approved Noted Referred Needs amendment Declined Withdrawn Overtaken by events See Minister's notes**Comments**

Pito matua – Key points

- You have asked for advice on fast-track legislative options to further respond to the current Russia/Ukraine crisis, including through asset freezes and other restrictions on individuals.
- s6(a)
s6(a)
- s9(2)(g)(i)
- In response to Russia’s aggression, Aotearoa New Zealand has announced a credible initial package of measures, our public statements, diplomatic representations, export controls, and travel bans. However, these measures fall short of the significant additional measures others are imposing, due to the lack of the necessary legislative tools to impose independent sanctions, particularly as the crisis continues to unfold and our partners impose increasingly strong measures.
- Sanctions by likeminded countries thus far include removing selected Russia banks from SWIFT, freezing Russia’s central bank assets, bans on exports to Russia that extend beyond dual use goods (e.g. aircraft, oil refinery equipment), financial and travel bans on individuals, closing air space, and freezing NordStream II. Such measures have extended beyond NATO Allies to include Australia, Japan and Korea. s6(a)
- As an “act of aggression” is considered to be such a fundamental breach of international law, all states are legally required to cooperate to bring the aggression to an end.
- s6(a)
- s9(2)(h)

s9(2)(h)

- Officials considers that there would be two options to respond to these risks:
 - Option 1: a bespoke Russia (and Belarus) Bill passed under urgency to address the specific context of Russian aggression against Ukraine. This could be ready for introduction next week (preferred); or
 - Option 2: a fast tracked modern sanctions law, ^{s9(2)(f)(vi)}
- MFAT prefers Option 1. Option 1 would enable us to stay in-step more readily with the broader international community and would be a further tangible demonstration of the Government's willingness to respond to Russia's ongoing, illegal aggression. With major New Zealand businesses withdrawing from Russia (e.g. Fonterra), an independent sanctions regime targeting Russia and Belarus would also give the Government tools to deal with issues likely to emerge, e.g. NZ investments in Russia, the risk that Russian investors might seek to use Aotearoa New Zealand as a "safe-haven" (with significant potential reputational risk attached) and travel to NZ.
- By contrast Option 2 would not provide any scope for New Zealand to impose sanctions against Russia in the short-term.

Option One (preferred) – Russia/Ukraine Sanctions Bill

- This option involves a bespoke fast-track Bill to specifically address the Russia/Ukraine crisis. The purpose would be to shore up existing measures and prevent Russian individuals or entities that have been sanctioned in other jurisdictions moving assets to New Zealand or using our financial system to circumvent those sanctions.
- The Bill would draw heavily on the existing Autonomous Sanctions Bill (the former Members Bill in the name of Hon Gerry Brownlee). Parliamentary Counsel have advised that, taking this approach, a new Russia Sanctions Bill could be ready for introduction as soon as Monday 7 March. ^{s9(2)(h)}
- The main advantage of this approach is that it would address the current gaps in a way that was specific to the Russia/Ukraine crisis. ^{s9(2)(f)(vi)}
- The Bill could target those responsible for, or complicit in, Russia's (and Belarus') illegal activities in Ukraine or the bill could use the Australian designation criteria which are somewhat broader, and include:

- the Minister is satisfied that the person or entity is responsible for, or complicit in, the threat to the sovereignty and territorial integrity of Ukraine;
 - the Minister is satisfied that the person or entity is, or has been, engaging in an activity or performing a function that is of economic or strategic significance to Russia;
 - the person is a current or former Minister or senior official of the Russian Government;
 - the person is an immediate family member of a person mentioned above.
- s6(a)
 - including:
 - Financial sanctions on designated persons and entities.
 - Asset freezes would prohibit a designated person or entity from using or dealing with their assets/funds in New Zealand.
 - They would also prohibit anyone directly or indirectly making funds/assets available to (or for the benefit of) a designated person or entity
 - Restrictions on trade in goods and services with Russia
 - These prohibit the export and import of certain goods and services (such as export bans to the military, which we already have in place, and dealing in services).
 - Restrictions on engaging in commercial activities
 - These may include prohibitions on purchasing or selling shares in entities operating in certain industries, or providing credit to certain entities (e.g. Australia has prohibited anyone from providing loans or credit to certain publicly owned or controlled Russian banks, and Russian oil companies)
 - And, possibly, banning of ships or aircraft;
 - The sanctions would be specified in primary legislation, with designated individuals or entities specified in secondary legislation, so the list of sanctioned individuals can be added to over time meaning that we would be able to continue to respond as the situation evolves.
 - If the government decided to take this approach and introduce the Bill under urgency, targeted sanctions for Russia (and Belarus) could be in place in a matter of weeks (e.g. week of 7 March to have the Bill passed under urgency and week of 14 March to have implementing regulations in place). Parliamentary Counsel have advised they could have a Bill ready for introduction for consideration by Cabinet as soon as Monday 7 March.
 - While not as resource intensive as Option 2, this option would require a range of agency resources dedicated to implementation, monitoring and enforcement of the sanctions against Russia (and Belarus).

Option two (less preferred) – Fast track legislation to introduce a comprehensive autonomous sanctions regime

- This option would involve developing and introducing a modern and comprehensive autonomous sanctions regime ^{s9(2)(f)(vi)}

- s9(2)(f)(vi)

The disadvantage is that this would not enable a swift response to the current crisis – it would not close the gaps identified in a timely fashion.

- s6(a)

Chris Seed
Secretary of Foreign Affairs and Trade

Tūtohu – Recommendations

It is recommended that you:

- 1 **Note** officials have identified two options to fast-track legislation

Option 1: a bespoke Russia (and Belarus) Sanctions Bill passed under urgency to address the specific context of Russian aggression against Ukraine. This Bill would be largely based on the former Autonomous Sanctions Bill (in the name of Hon Gerry Brownlee) and Parliamentary Counsel have advised it could be ready for Introduction on Monday 7 March; or

Option 2: a fast tracked modern sanctions law, ^{s9(2)(f)(vi)}

- 2 **Note** Parliamentary Counsel have advised that they could have a new Government Bill (drawing on the previous Autonomous Sanctions Bill) ready for introduction by Monday 7 March

- 3 **Direct** MFAT officials to work with Parliamentary Counsel Office to develop a Bill ready for introduction for consideration by Cabinet on Monday 7 March

Yes/No

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Date: / /