

Proactive Release

Date: 5 July 2022

The following Cabinet paper and related Cabinet minutes have been proactively released by the Minister of Foreign Affairs

Title	Reference
Minute of Decision – Foreign Affairs (Consular Loans) Amendment Bill: Approval for Introduction	CAB-22-MIN-0184
Minute of Decision – Report of the Cabinet Legislation Committee	LEG-22-MIN-0077
Foreign Affairs (Consular Loans) Amendment Bill: Approval for Introduction	Cabinet paper

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redaction code:

- 9(2)(f)(iv): to protect the confidentiality of advice tendered by Ministers of the Crown and officials.



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Foreign Affairs (Consular Loans) Amendment Bill: Approval for Introduction

Portfolio Foreign Affairs

On 19 May 2022, the Cabinet Legislation Committee:

- 1 **noted** that the Foreign Affairs (Consular Loans) Amendment Bill (the Bill) has a category three priority (to be passed if possible in 2022) on the 2022 Legislation Programme;
- 2 **noted** that the Bill will provide express statutory authority for the Minister of Foreign Affairs to issue consular loans;
- 3 **approved** the Foreign Affairs (Consular Loans) Amendment Bill [PCO 23529/6.0] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **agreed** that the Bill be introduced in May 2022;
- 5 **agreed** that the government propose that the Bill be:
 - 5.1 referred to the Foreign Affairs, Defence and Trade committee for consideration;
 - 5.2 enacted the day after the date of Royal assent.

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Kris Faafoi
Hon Kiri Allan
Hon Dr David Clark
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Meka Whaitiri
Keiran McNulty, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG



Cabinet

Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 20 May 2022

On 23 May 2022, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 20 May 2022:

s9(2)(f)(iv)

Proactively released
by the Minister for Foreign Affairs

s9(2)(f)(iv)

LEG-22-MIN-0077

Foreign Affairs (Consular Loans) Amendment Bill:
Approval for Introduction
Portfolio: Foreign Affairs

CONFIRMED

Michael Webster
Secretary of the Cabinet

[In Confidence]

Office of the Minister for Foreign Affairs

Cabinet Legislation Committee

Foreign Affairs (Consular Loans) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval to introduce the Foreign Affairs (Consular Loans) Amendment Bill. The Bill will grant the Minister of Foreign Affairs express statutory authority to issue consular loans.

Policy

- 2 The Ministry of Foreign Affairs and Trade (MFAT) has provided consular loans to New Zealanders in distress offshore for over 25 years. Loans are only granted in exceptional circumstances and are an important tool for assisting New Zealanders offshore whose immediate health and safety is at risk and who have no other means of finance.
- 3 In early 2020, while managing a significant increase in consular loans during the COVID-19 pandemic, MFAT revisited the basis for granting consular loans. At that point MFAT became aware that an amendment in 2013 to the Public Finance Act 1989 (PFA) had changed the provisions on Crown lending to require express statutory authority to make loans, which MFAT did not have. It is widely accepted that MFAT not having express statutory authority was an oversight rather than an intended effect of the PFA amendments in 2013.
- 4 This Bill provides the express statutory authority required under the PFA, and allows MFAT to continue its long-standing practice to issue consular loans. This Bill does not seek to create a new policy approach to issuing consular loans. It will replace a delegation from the Minister of Finance through the Secretary of the Treasury in June 2020, granted to provide a temporary fix to allow loans to continue to be made until a permanent measure could be put in place.
- 5 Cabinet's Government Administration and Expenditure Review Committee (GOV) approved the policy for the Bill on 23 September 2021 (GOV-21-MIN-0029). It agreed:
 - 5.1 the Foreign Affairs Act 1988 should be amended to authorise loans to New Zealand citizens and their immediate family members, and in rare cases permanent residents who are outside New Zealand facing exceptional circumstances;
 - 5.2 the authority to grant loans be vested in the Minister of Foreign Affairs as a delegable power;

- 5.3 to retrospectively create statutory authority for loans granted between July 2013 and June 2020.
- 6 The draft Bill will enable the implementation of these decisions by GOV.
- 7 Cabinet approved the GOV minute on 27 September 2021 (CAB-21-MIN-0391). The Minister of Foreign Affairs has sought Priority 3 from Cabinet (to be passed if possible in 2022) on the Government's 2022 Legislation Programme.
- 8 Under the proposed new section 12A(2)(c) of the Foreign Affairs Act, whether a loan would be appropriate is to be determined, in part, according to whether this would be consistent with "New Zealand's consular functions". The ambit of these functions is set out in MFAT's policy for providing temporary financial assistance. The Bill therefore intends to allow for operationalisation of this policy. The policy provides that loans may be issued to New Zealand citizens or permanent residents, and their accompanying family members, only for a certain range of specified needs and circumstances; only if they are in distress overseas and have no alternative means of finance; and provided certain other criteria are met (mostly related to assurance that a loan can likely be recovered). Under the policy the circumstances in which a loan may be made to a permanent resident are narrower than for citizens.

Impact analysis

- 9 Treasury's Regulatory Impact Analysis Team has determined the proposal in the Foreign Affairs (Consular Loans) Amendment Bill is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Compliance

- 10 The Bill complies with each of the following:
- 10.1 the principles of the Treaty of Waitangi;
 - 10.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 10.3 the disclosure statement requirements (a Department Disclosure Statement has been prepared and is attached to the paper – see Annex 1);
 - 10.4 the principles and guidelines set out in the Privacy Act 2020;
 - 10.5 relevant international standards and obligations;
 - 10.6 the [Legislation Guidelines](#) (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 11 The Ministry of Foreign Affairs and Trade has consulted with the Parliamentary Counsel Office, The Treasury, and the Legislation Advisory Design Committee in developing this legislation. The consultation resulted in no substantive comments or recommendations that amendments be made to drafting. The consultation clarified that it is the intent of the Bill to not include residence class visa holders within the class of persons who may be eligible to obtain a consular loan.

Binding on the Crown

- 12 The principal Act does not state that it is binding on the Crown; the Bill therefore does not change this.

Creating new agencies or amending law relating to existing agencies.

- 13 The Bill does not create a new agency nor amend existing agencies.

Allocation of decision making powers

- 14 The Bill introduces new decision-making powers for the Minister of Foreign Affairs, which will allow the Ministry's policy and procedures on consular loans (that preceded changes to Crown lending in 2013 because of an amendment to the Public Finance Act 1989), to be reinstated.
- 15 The new decision-making powers provides the Minister:
- 15.1 the express statutory authority to issue consular loans and will allow loans to be issued to New Zealand citizens and permanent residents in accordance with New Zealand's consular functions;
 - 15.2 with the ability to reinstate MFAT's long-standing practice of issuing consular loans without a delegated authority by the Minister of Finance through the Secretary of Treasury.

Associated regulations

- 16 No regulations will be needed to bring the Bill into operation.

Other instruments

- 17 The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments (or both).

Definition of Minister/department

- 18 The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position) that requires clearance from the Cabinet Office.

Commencement of legislation

- 19 The Bill is proposed to come into force the date after Royal assent.

Parliamentary stages

- 20 The Bill should be introduced in May 2022 and come into effect the day after the date of Royal assent.
- 21 The Bill should be referred to the Foreign Affairs, Defence and Trade select committee.

Proactive Release

- 22 The Minister proposes to proactively release this paper in whole, subject to redaction as appropriate under the Official Information Act.

Recommendations

The Minister for Foreign Affairs recommends that the Committee:

- 1 note that category 3 priority (to be passed if possible by 2022) on the 2022 Legislation Programme was sought for the Foreign Affairs (Consular Loans) Amendment Bill;
- 2 note that the Bill will provide express statutory authority for the Minister of Foreign Affairs to issue consular loans;
- 3 approve the Foreign Affairs (Consular Loans) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 agree that the Bill be introduced in May 2022;
- 5 agree that the government propose that the Bill be:
 - 5.1 referred to the Foreign Affairs, Defence and Trade committee for consideration;
 - 5.2 enacted the day after the date of Royal assent.

Authorised for lodgement

Hon Nanaia Mahuta
Minister for Foreign Affairs

Annex 1 Departmental Disclosure Statement

The Foreign Affairs (Consular Loans) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Foreign Affairs and Trade.

The Ministry of Foreign Affairs and Trade certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

Finalised on Wednesday 11 May.

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Part One: General Policy Statement

The Bill provides express statutory authority for the Minister of Foreign Affairs to continue the practice of issuing consular loans, consistent with New Zealand's consular functions, to New Zealand citizens and permanent residents where exceptional circumstances exist.

The Ministry of Foreign Affairs and Trade's long-standing practice of issuing consular loans did not require express authority under the Public Finance Act 1989 until that Act was amended in 2013.

For over 25 years, the Ministry has assisted New Zealanders in distress overseas by providing them with temporary financial assistance by way of a consular loan when they have no other means of financial assistance and their immediate health and

safety is at risk. The Bill is necessary in continuing this long-standing practice, as well as validating the consular loans granted by the Ministry, in good faith, after the Public Finance Act 1989 was amended in 2013 and before the Ministry received delegated authority in 2020 to lend money under the Public Finance Act 1989.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
Treasury's Regulatory Impact Analysis Team has determined the proposal to amend the Foreign Affairs (Consular Loans) Bill is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

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

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

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
The Ministry does not consider the policy to be given effect by the Bill to be inconsistent with any international obligations. The policy to be given effect by this Bill is not novel. It has been part of Ministry practice for over 25 years. Providing financial assistance in exceptional circumstances for nationals offshore is also a common practice by many countries including New Zealand. The Bill enables continuation of the practice of issuing consular loans where necessary, by responding to an amendment to the Public Finance Act in 2013 which requires express statutory authority to lend money.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
The Ministry analysed the Bill and did not identify any implications nor inconsistencies with the rights and interests of Māori protected under the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
The Ministry of Justice is currently completing its vetting process in accordance with section 7 of the New Zealand Bill of Rights Act 1990. The section 7 report of the Attorney-General is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill (https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/)	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
The Bill does however confirm consular loans to be a debt due to the Crown and recoverable in a court of competent jurisdiction.	

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
The Ministry of Foreign Affairs and Trade has provided consular loans to New Zealanders in distress offshore for over 25 years on the basis of the policy that underpins the Bill. The Bill re-affirms the current policy approach. MFAT is confident the provisions are workable and complete.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The Bill retrospectively validates loans granted between July 2013 and June 2020 in the transition provision. The Legislation Design and Advisory Committee has confirmed that retrospective validation in this Bill could be justified and appropriate. The Legislative guidelines provide that retrospective effect in legislation might be appropriate if it is intended to "validate matters generally understood to be lawful, but that are, in fact, unlawful as a result of a technical error".</p> <p>The absence of statutory authority for consular loans issued between 2013 – June 2020 was a technical error based on a mistaken application of an exemption from the Public Finance Act. In addition, legally validating these loans would confirm the status quo understood by the Ministry and the recipient of consular loans, and would not change the rights and responsibilities as understood between the two parties. The Ministry and each individual who was granted a loan between 2013 and June 2020 believed the loans to be valid. Loan recipients signed an undertaking to repay acknowledging they would owe a debt and understood that the money needed to be repaid. This approach would also support the rule of law as it would ensure the law is clear, consistent and enforceable and that all loan recipients are treated equally.</p>	

Strict liability or reversal of the usual burden of proof for offences

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

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
<p>The intent of the Bill is to be permissive, and to retain flexibility for the Minister of Foreign Affairs to respond to emergency circumstances as they arise. Several recent international events - including the response to Covid-19 - have underscored the need for flexibility to adjust policies to enable adequate consular support quickly in emergency circumstances. A prescriptive legislative framework which sought to predict all possible circumstances where a loan might be required and appropriate would inherently limit the ability of the Ministry, through the Minister, to respond quickly in specific cases. As such, it is intended that the Ministry's policies would set out in finer detail the scope of those eligible for consular loans, including immediate family members who may benefit from the consular loans and the situations which constitute "in distress" for the purpose of the Bill.</p>	

Foreign Affairs (Consular Loans) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Bill provides express statutory authority for the Minister of Foreign Affairs to continue the practice of issuing consular loans, consistent with New Zealand's consular functions, to New Zealand citizens and permanent residents where exceptional circumstances exist.

The Ministry of Foreign Affairs and Trade's long-standing practice of issuing consular loans did not require express authority under the Public Finance Act 1989 until that Act was amended in 2013.

For over 25 years, the Ministry has assisted New Zealanders in distress overseas by providing them with temporary financial assistance by way of a consular loan when they have no other means of financial assistance and their immediate health and safety is at risk. The Bill is necessary in continuing this long-standing practice, as well as validating the consular loans granted by the Ministry, in good faith, after the Public Finance Act 1989 was amended in 2013 and before the Ministry received delegated authority in 2020 to lend money under the Public Finance Act 1989.

Departmental disclosure statement

The Ministry of Foreign Affairs and Trade is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at [PPU to insert URL and link] (if it has been provided for publication).

Regulatory impact statement

A regulatory impact statement is not required for this Bill.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 states that the Bill amends the Foreign Affairs Act 1988.

Clause 4 inserts *new section 2AA*, which gives effect to transitional, savings, and related provisions set out in *new Schedule 1*.

Clause 5 inserts *new section 12A*, which expressly authorises the Minister of Foreign Affairs to lend money to, or for, New Zealand citizens and permanent residents who are outside New Zealand. Before lending the money, the Minister must be satisfied that—

- the person is in distress; and
- exceptional circumstances exist; and
- lending money would provide short-term assistance consistent with New Zealand's consular functions.

If a loan is not repaid in full, the unpaid amount is a debt to the Crown and court proceedings may be taken to recover the debt.

Clause 6 inserts *new Schedule 1* to provide for the retrospective validation of consular loans made in the period that started on 18 July 2013 and ended on 15 June 2020. During that period, the Ministry of Foreign Affairs and Trade did not have delegated authority to lend money under the Public Finance Act 1989 or any other statutory authority to lend money.

Clauses 7 and 8 make minor consequential amendments to section 14 and the existing Schedule.

Hon Nanaia Mahuta

Foreign Affairs (Consular Loans) Amendment Bill

Government Bill

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6	New Schedule 1 inserted	2
7	Section 14 amended (Consequential amendments, repeals, and savings)	2
8	Schedule amended	3
	Schedule	4
	New Schedule 1 inserted	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Foreign Affairs (Consular Loans) Amendment Act **2022**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Foreign Affairs Act 1988.

4 New section 2AA inserted (Transitional, savings, and related provisions)

After section 2, insert:

2AA Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

5 New section 12A inserted (Consular loans)

After section 12, insert:

12A Consular loans

- (1) The Minister of Foreign Affairs, on behalf of the Crown, may lend money to—
 - (a) a New Zealand citizen who is outside New Zealand;
 - (b) a permanent resident who is outside New Zealand;
 - (c) an individual who is assisting a person referred to in **paragraph (a) or (b)** (an **assisting party**).
- (2) The Minister may lend money under **subsection (1)** if the Minister is satisfied that—
 - (a) a person referred to in **subsection (1)(a) or (b)** is in distress; and
 - (b) exceptional circumstances exist; and
 - (c) lending money would provide short-term assistance consistent with New Zealand's consular functions.
- (3) The Minister may lend money under **subsection (1)** on any terms and conditions that the Minister sees fit.
- (4) If the Minister lends money under **subsection (1)**, the amount payable by the borrower is recoverable in a court of competent jurisdiction as a debt due to the Crown.
- (5) In this section,—

borrower means a person or an assisting party who—

 - (a) received a loan under **subsection (1)**; and
 - (b) has not fully repaid the amount payable under the loan

permanent resident has the same meaning as in section 4 of the Immigration Act 2009.

6 New Schedule 1 inserted

Insert the **Schedule 1** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

7 Section 14 amended (Consequential amendments, repeals, and savings)

In section 14(1), replace “the Schedule” with “Schedule 2”.

8 Schedule amended

In the Schedule heading, after “Schedule”, insert “2”.

Proactively released
by the Minister for Foreign Affairs

Schedule
New Schedule 1 inserted

s 6

Schedule 1
Transitional, savings, and related provisions

s 2AA

Part 1
Provision relating to Foreign Affairs (Consular Loans) Amendment
Act 2022

1 Validation of consular loans

- (1) This clause applies to any lending of money by the Ministry in the period that started on 18 July 2013 and ended on 15 June 2020 for the purpose of providing consular assistance to a person outside New Zealand.
- (2) The lending is and always has been authorised for the purposes of section 65K of the Public Finance Act 1989.
- (3) In this clause, **lend money** has the meaning given in section 2(1) of the Public Finance Act 1989.