

# Proactive Release

Date: 19 April 2022

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

<b>Title</b>	<b>Reference</b>
<i>Russia Sanctions Bill: Approval for Introduction</i>	
<i>Minute of Decision – Russia Sanctions Bill: Approval for Introduction</i>	CAB-21-MIN-0058

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 OIA). Where this is the case, the relevant sections of the OIA 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 OIA redaction codes:

- 6(a): to avoid prejudicing the international relations of the New Zealand Government;
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments;
- 9(2)(f)(iv): the confidentiality of advice tendered by Ministers of the Crown and officials; and
- 9(2)(h): to maintain legal professional privilege.



# Cabinet

## 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.*

### Russia Sanctions Bill: Approval for Introduction

Portfolio                      Foreign Affairs

On 7 March 2022, Cabinet:

- 1        **noted** that through its invasion of Ukraine, Russia (supported by Belarus) has shown a flagrant disregard for international law and breached its most fundamental norms, and abdicated its responsibility to uphold global peace and security;
- 2        **noted** that New Zealand moved quickly to institute targeted travel bans, export controls, and other diplomatic measures to respond to Russia's aggression;
- 3        **noted** that Russia has used its veto to prevent the United Nations Security Council from taking effective measures to restore international peace and security;
- 4        **noted** that many countries have decided to take collective action to impose significant financial and other sanctions against Russia;
- 5        **agreed** that New Zealand should take similar measures in order to support the collective efforts of the international community;
- 6        **agreed** that the government should progress specific sanctions legislation, a Russia Sanctions Bill, targeted at Russia and any other country complicit in its aggression (e.g. Belarus);
- 7        **agreed** that the Bill should:
  - 7.1      establish a framework for the implementation and enforcement of sanctions by New Zealand in response to the illegal invasion of Ukraine and any other states by the Russian Federation and other complicit states;
  - 7.2      empower the Minister of Foreign Affairs to recommend regulations to impose sanctions, which are appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine or another country, including responses which would sanction:
    - 7.2.1    persons responsible for, or associated with, the threats; and/or
    - 7.2.2    assets or services involved (or that may be involved) in the threats; and/or
    - 7.2.3    persons, assets, or services that will be, are, or have been economically or strategically relevant to a country making the threats; and/or

- 7.2.4 persons, assets, or services from a country making the threats;
- 7.3 include the ability for regulations to prohibit or restrict a sanctioned person from travelling to, entering or remaining in New Zealand, and deporting any sanctioned individuals if present in New Zealand;
- 7.4 empower the Secretary of Foreign Affairs and Trade to issue designation notices outlining the specific persons, assets or services to be sanctioned under the regulations;
- 7.5 establish a public sanctions register listing all persons, assets, or services sanctioned under designation notices;
- 7.6 provide an expiry date on all designation notices issued, with renewal only contemplated where necessary;
- 7.7 incorporate provisions to ensure that sanctions are able to be reviewed and revoked, and subject to exemptions where appropriate;
- 7.8 utilise existing legislative processes and mechanisms for the monitoring and enforcement of immigration restrictions and import and export restrictions by requiring duty holders captured by the Anti- Money Laundering and Countering Financing of Terrorism Act 2009 to report to the Commissioner of Police when they suspect they are in possession of assets or providing services that are subject to a sanction;
- 7.9 confer immunity from legal proceedings on any person who takes action in good faith in order to comply with a sanction;
- 7.10 allow civil and criminal enforcement action to be taken against individuals or entities who fail to comply with a sanction, including with appropriate criminal offences;
- 7.11 impose extraterritorial jurisdiction for offences committed under the Bill;
- 7.12 provide the ability to make regulations compensating any persons in relation to assets or services that are adversely affected by the imposition of sanctions;
- 8 **authorised** the Minister of Foreign Affairs to make drafting amendments to the Russia Sanctions Bill in consultation with the Prime Minister and Attorney General;
- 9 **agreed** that the Russia Sanctions Bill be binding on the Crown;
- 10 **approved** for introduction the Russia Sanctions Bill [PCO 24635], subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 11 **agreed** that the Bill be introduced on 9 March 2022;
- 12 **agreed** that the Government propose that the Bill be introduced and passed under urgency, without referral to the Foreign Affairs, Defence and Trade Committee;
- 13 **authorised** a group of ministers comprising the Prime Minister, the Deputy Prime Minister, Hon Nanaia Mahuta, Hon David Parker, Hon Andrew Little, Hon Damien O'Connor, Hon Kris Faafoi and Hon Peeni Henare to have Power to Act to take decisions on the making of regulations and to authorise their drafting in order to implement strong and effective sanctions to respond to Russia's aggression;

- 14 **invited** the Minister of Foreign Affairs to seek authorisation from Cabinet to submit the regulations to the Executive Council as soon as possible.

Michael Webster  
Secretary of the Cabinet

Proactively Released  
by the Minister of Foreign Affairs

Office of the Minister of Foreign Affairs

Chair, Cabinet

## **Russia Sanctions Bill: Approval for Introduction**

### **Proposal**

- 1 I propose that the Russia Sanctions Bill be approved for introduction to the House.

### **Policy**

- 2 The Russia Sanctions Bill would establish a framework for the implementation of sanctions by New Zealand in response to the Russian Federation's aggressive acts and other breaches of international law, especially its illegal invasion of Ukraine. The Bill would further strengthen and expand on the actions New Zealand has already taken in responding to the crisis and allow New Zealand to take practical steps to respond to threats to the sovereignty or territorial integrity of Ukraine.
- 3 The proposed Bill would establish a legislative framework to impose and enforce sanctions on specific or classes of individuals, entities, assets, or services that are, for example: responsible for; have been associated with; or are economically or strategically relevant to a country making threats to the sovereignty or territorial integrity of Ukraine or another country. It will prevent them from moving assets to New Zealand or using our financial system to circumvent sanctions imposed by the wider international community. It will also include the ability to prohibit entry of any sanctioned vessels or aircraft to New Zealand airspace and waters.
- 4 Where there is evidence that another state is providing such illegal aid or assistance to Russian aggression – such as actions of Belarus in allowing its territory to be used by Russian forces, or cyber-attacks from third states – the Bill will also allow relevant individuals and entities from that state to similarly be subject to sanctions. Correspondingly, the Bill also provides the ability to apply sanctions against Russia in the event that it threatens the sovereignty or territorial integrity of more of its neighbours.

### *Implications of Russia's military actions in Ukraine*

- 5 Russia's actions are a clear act of aggression; a blatant breach of Ukraine's sovereignty and territorial integrity; and a violation of international law and the United Nations Charter by a permanent member of the United Nations Security Council (UNSC). The clearest indication of the extent of international opprobrium is the UN General Assembly condemnation of Russia's aggression against Ukraine, which was resoundingly adopted with 141 votes in favour and only 5 against (Russia, Belarus, Eritrea, North Korea, Syria).

6 s6(a)

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*New Zealand Response*

10 New Zealand's policy settings have adapted at pace to match the circumstances and demonstrate our strong stand against Russia's actions. We have registered our condemnation, in the strongest possible terms, of Russia's invasion of Ukraine. We have imposed export controls on goods that could have supported the Russian military. We have imposed travel bans on nearly 100 actors close to the Russian and Belarusian regimes. The NZ Super Fund, Accident Compensation Corporation, Government Superannuation Fund and National Provident Fund announced on 3 March that they have excluded Russian sovereign debt and the securities of majority Russian state-owned enterprises from their respective funds. We were early out of the blocks with an announcement of NZ\$2m in humanitarian support channelled through the ICRC. In an effort to calm energy markets, New Zealand has joined with other International Energy Agency members in a voluntary release of oil stocks.

11 Our current sanctions send an important signal, but it has become clear that we need a suite of options to continue to stand against Russia's invasion and support Ukraine. While the Government had been considering issuing additional directives under the Overseas Investment Act 2005 limiting

investment in New Zealand by Russian nationals, this option was not sufficient to respond to the gravity of the situation.

*Why is the Bill necessary?*

- 12 New Zealand does not have an autonomous sanctions regime. As a small state, we have accentuated the UN Security Council's responsibility and centrality in upholding collective security, including through its ability to impose sanctions. That is why the Government currently only has the powers to impose sanctions under the United Nations Act 1946 if these are authorised by the UNSC. However, as a permanent member of the UNSC, Russia has used its veto power to prevent collective action, including sanctions.
- 13 The fact Russia has been able to frustrate the collective security system underlines our support for reform of the UNSC. However, a collective response is demanded now to reinforce the key principles of collective security, albeit outside the UN framework. Internationally, a progressive set of sanctions that are having far-reaching economic ramifications for Russia have been imposed by the United States, the European Union, the United Kingdom, Australia, Japan, Singapore and other countries.
- 14 In light of the UNSC being unable to act, this Bill will ensure that our Government also is able to prohibit or restrict activity in New Zealand by individuals or entities responsible or associated with this invasion. It will ensure that New Zealand has the legislative tools to join the collective action of the international community to respond to Russia's actions.
- 15 The proposed Bill would offer a bespoke sanctions regime to specifically address the crisis by applying wide ranging sanctions against Russia and any other states which provide illegal aid or assistance to Russian aggression. The purpose would be to consolidate existing measures taken by New Zealand (such as travel bans) and legislate further to enable widespread sanctions against persons, assets or services that are responsible for, have been associated with, or are economically or strategically relevant to a country making threats to the sovereignty or territorial integrity of Ukraine. It would allow the Government to prohibit all exports from New Zealand to sanctioned entities. It would also allow the Government to prohibit entry to New Zealand's airspace and waters for any sanctioned vessel or aircraft.
- 16 The proposed Bill would align New Zealand's response to that of the broader international community and would be a further tangible demonstration of the Government's willingness to respond to Russia's ongoing and illegal aggression. The Bill would allow for sanctions which would be equivalent to those which Australia has imposed in response to Russia's invasion of Ukraine. A comparison of how New Zealand's responses to date compare with those of partners is outlined in a table in Annex 1 to this paper. This table also compares the scope of partners' sanctions legislation with this Bill, as well as the Autonomous Sanctions Members Bill in Hon Gerry Brownlee's name which did not proceed.

- 17 With major New Zealand businesses withdrawing from Russia, an independent sanctions regime targeting Russia and Belarus would also give the Government tools to deal with issues likely to emerge, such as investment by New Zealand entities in Russia, the threat of Russian investors seeking to use New Zealand as a “safe-haven” (with significant potential reputational risk attached), as well as travel to New Zealand by key individuals associated with Russia’s actions. Sanctions could be imposed on both specific or classes of persons, assets and services, and could be as broad or narrow as necessary. For instance, this could capture companies, state institutions and political organisations.

**Possible future role for sanctions**

- 18 The proposed Bill only applies sanctions in response to threats to the sovereignty or territorial integrity of Ukraine or other countries further threatened by Russia’s actions. This is intentional to respond rapidly to the grave actions of Russia. <sup>s9(2)(g)(i)</sup>

- 19 <sup>s9(2)(f)(iv)</sup>

**The Russia Sanctions Bill**

- 20 In summary, this Bill will:
- 20.1 establish a framework for the implementation and enforcement of sanctions by New Zealand in response to the illegal invasion of Ukraine and any other states by the Russian Federation and other complicit states;
  - 20.2 empower the Minister of Foreign Affairs to recommend regulations to impose sanctions, which are appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine or another country, including responses which would sanction:
    - 20.2.1 persons responsible for, or associated with, the threats; and/or
    - 20.2.2 assets or services involved (or that may be involved) in the threats; and/or



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- 20.2.3 persons, assets, or services that will be, are, or have been economically or strategically relevant to a country making the threats; and/or
- 20.2.4 persons, assets, or services from a country making the threats.
- 20.3 include the ability for regulations to prohibit or restrict a sanctioned person from travelling to, entering or remaining in New Zealand, and deporting any sanctioned individuals if present in New Zealand;
- 20.4 empower the Secretary of Foreign Affairs and Trade to issue designation notices outlining the specific persons, assets or services to be sanctioned under the regulations;
- 20.5 establish a public sanctions register listing all persons, assets, or services sanctioned under designation notices;
- 20.6 provide an expiry date on all regulations and designation notices issued, with renewal only contemplated where necessary;
- 20.7 incorporate provisions to ensure that sanctions are able to be reviewed and revoked, and subject to exemptions where appropriate;
- 20.8 utilise existing legislative processes and mechanisms for the monitoring and enforcement of immigration restrictions and import and export restrictions by requiring duty holders captured by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to report to the Commissioner of Police when they suspect they are in possession of assets or providing services that are subject to a sanction;
- 20.9 confer immunity from legal proceedings on any person who takes action in good faith in order to comply with a sanction;
- 20.10 allow civil and criminal enforcement action to be taken against individuals or entities who fail to comply with a sanction;
- 20.11 impose extraterritorial jurisdiction for offences committed under the Bill;
- 20.12 provide the ability to make regulations compensating any persons in relation to assets or services that are adversely affected by the imposition of sanctions.

*Overall regulatory design*

- 21 The **Russia Sanctions Bill** permits the imposition and enforcement of sanctions in response to Russia's aggression and details the possible scope of any sanctions and sets the parameters of persons, assets and services which may be subject to sanctions.

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- 22 The Bill allows the Governor-General by Order in Council to make **Sanctions Regulations**. These regulations determine which of the sanctions provided for in the Bill will apply at any given time. The purpose of this power is to allow for a flexible response which enables New Zealand to adjust its sanctions in accordance with developments in Ukraine or other countries (for example, for particular types of sanctions to be removed or amended if there are positive developments or vice-versa).
- 23 The Bill allows the Secretary of Foreign Affairs and Trade to issue **Designation Notices** in the *Gazette* which list the further details of the particular persons, assets or services subject to the various sanctions in the regulations.
- 24 This Bill allows for regulations to be made which may prohibit or restrict dealings with assets or services which may be regulated by existing legislation. Sanctions inherently require a departure from existing legislation, but only in relation to the specific persons or things subject to sanctions. The approach in this Bill is consistent with the approach to UNSC sanctions under the United Nations Act 1946. The Bill provides for sanctions made under this Act to depart from primary legislation. Without such a power, a large amount of primary legislation may need to be amended every time sanctions are imposed against a new person or asset. All sanctions imposed by regulations would need to be assessed for compliance with the New Zealand Bill of Rights Act 1990 (NZBORA) which is an important safeguard.
- 25 Once enacted, I intend to return to Cabinet as soon as practicable with a proposal for Sanctions Regulations for presentation to the Executive Council.

*Who or what can be subject to sanctions in the Bill?*

- 26 The scope of sanctions permitted by the Bill are broadly consistent with those of our international partners. In the Bill, Sanctions can be imposed on a wider range of persons, assets and services, to respond to threats to the sovereignty or territorial integrity of Ukraine or another country, including for example:
- 26.1 *persons responsible for, or associated with, threats to the sovereignty or territorial integrity of Ukraine* – this could include Vladimir Putin and his Cabinet; other high-ranking government or military officials; members of the State Duma, and their families;
- 26.2 *assets or services involved (or that may be involved) in threats to the sovereignty or territorial integrity of Ukraine* – this could include assets, services (including financial services) or other commercial activities connected with Russian military, security or intelligence services; or
- 26.3 *persons, assets, or services that will be, are, or have been economically or strategically relevant to a country making threats to the sovereignty or territorial integrity of Ukraine (i.e. Russia)* – this could include for example, Russia's financial institutions, influential individuals with economic or political connections to those responsible

for the invasion (so called “oligarchs”). This is intended to allow New Zealand (along with the wider international community) to impose significant measures on key figures in order to exert economic and strategic pressure on the Russian government; or

- 26.4 *persons, assets, or services from a country making threats to the sovereignty or territorial integrity of Ukraine* – this would include the ability to impose punitive sanctions on wider classes of persons, assets, or services, and allow for instance, the inclusion of family members of individuals outlined above, and allow for the inclusion of sanctions against assets such as all Russian flagged or Russian owned ships and aircraft.
- 27 The Bill will define key terms including “assets”, “persons” and “services” broadly. For example: “Asset” includes real and personal property in either tangible or intangible form. “Person” includes individuals and other entities such as companies, corporations and trusts. “Services” includes for example advice or assistance; communications; carriage; financial, accounting or lending services; and services related to military activities.
- 28 While primarily directed at Russia, the Bill’s empowering provisions also allow sanctions to be imposed against any other country which is threatening the sovereignty or territorial integrity of Ukraine. In particular this includes Belarus.<sup>1</sup>

*What sanctions can be imposed?*

- 29 The Bill sets a threshold for when the Minister may make a recommendation for Sanctions to be made under the Bill. The Minister may make a recommendation only if the Minister is satisfied that the regulations are “appropriate” to respond to threats to the sovereignty or territorial integrity of Ukraine or another country. Additionally, the Minister must be satisfied that the United Nations Security Council is unlikely to act or has acted insufficiently.
- 30 The Bill permits the Minister to impose the following sanctions on persons, assets or services described above. Sanctions can be prohibitions or restrictions on:
- 30.1 persons travelling to, entering, or remaining in New Zealand – this would be similar to existing travel bans;
- 30.2 dealing with assets – using, receiving, providing, or otherwise dealing with assets in any way (for example, purchasing property or shares; importing or exporting assets of a sanction person or entity). It is this sanction that would “freeze” a sanctioned persons assets in New Zealand; and/or

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<sup>1</sup> References to Russia should be taken to include the possibility of similar measures being taken against Belarus in light of its complicity in Russia’s actions.

- 30.3 dealing with services – using, receiving, providing, or otherwise dealing with services in any way (for example, the provision of banking services, legal services, or the provision of credit).
- 31 The Bill allows the Secretary of Foreign Affairs and Trade to issue designation notices in the *Gazette* which list the further details of the particular persons, assets or services subject to the various sanctions in the regulations..
- 32 The proposed Bill will provide the flexibility to allow exemptions, for example on humanitarian grounds. Such authorisations would be subject to appropriate conditions.
- 33 Any sanctions imposed under the proposed Bill would be of a temporary, not a permanent nature. Accordingly the framework would provide for a designation decision or a decision to freeze specified assets to expire after a period of three years from the date on which the decision took effect, unless deliberately renewed.

*Monitoring and Enforcement*

- 34 While existing processes and mechanisms are in place for the monitoring and enforcement of immigration restrictions and import and export restrictions, the Bill contains a requirement for duty holders already captured under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to report to the Commissioner of Police when they suspect they are in possession of assets or providing services that are subject to a sanction. This will facilitate the monitoring and enforcement of any restrictions imposed under sanctions regulations. At the same time, the Bill confers immunity from legal proceedings on any person who takes action in good faith in order to comply with the Bill or regulations made under the Bill.
- 35 The Bill creates a civil liability regime for people who breach a sanction (without lawful justification or reasonable excuse). The regime also applies if there are reasonable grounds to believe that a person is likely to breach a sanction. The Attorney-General may issue a formal warning to a person to whom the regime applies or accept an enforceable undertaking from the person and then seek an order of the court if the undertaking is breached. Alternatively, the Attorney-General may seek an injunction restraining a person from breaching a sanction
- 36 The Bill also provides for a number of criminal offences (including with extra-territorial application in relevant cases).
- 36.1 It is an offence to knowingly or recklessly breach a sanction (without lawful justification or reasonable excuse;

Penalty: for individuals, imprisonment for a term not exceeding 7 years or a fine not exceeding \$100,000 (or both) and, for entities, by a fine not exceeding \$1 million.

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36.2 It is an offence to knowingly provide false information, or make material omissions, in connection with an application for the amendment or revocation of, or for an exemption from, a sanction;

Penalty: for individuals, imprisonment for a term not exceeding 7 years or a fine not exceeding \$100,000 (or both) and, for entities, by a fine not exceeding \$1 million.

36.3 It is an offence to knowingly failing to provide a report required is an offence;

Penalty: for individuals, imprisonment not exceeding 1 year or a fine not exceeding \$20,000 (or both) and, for entities, punishment for entities is a fine not exceeding \$200,000.

36.4 It is an offence knowingly providing false information or making material omissions in a report;

Penalty: a fine not exceeding \$10,000.

37 In addition to the penalties above, the court may order a person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the court is satisfied that the offence was committed in the course of producing a commercial gain.

38 All the provisions of the Customs and Excise Act 2018 that apply with respect to prohibited imports or to prohibited exports also apply to assets subject to a sanction under this Bill.

39 Where designated individuals (other than New Zealand citizens or holders of a residence class visa) are already in New Zealand at the time of designation, the Bill allows the sanctions regulations to prohibit or restrict them from remaining in New Zealand, and links to the deportation provisions of the Immigration Act 2009.

40 The Bill does not enable assets seizures (only asset freezes). Application of an asset freeze, including of land, will deprive the owner of the ability to use or profit from those assets for such time as the sanctions are in force. This is a significant power.

41 s9(2)(h)

42 Neither Australia nor the United Kingdom's regimes allow for asset seizures, although the British Government has sought advice on whether it could be possible to extend its regime to seizures without exposing it to legal challenge.

43 The Bill allows for regulations to specify how frozen assets are to be preserved, managed, or disposed of during the time they are prohibited or

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restricted. This will ensure that the operation of frozen assets such as farms or businesses can be preserved where practicable, and that employees and/or livestock can be managed appropriately.

- 44 The Bill does allow for assets to be seized where there is an attempt to import or export assets in breach of a sanction (this is an existing power under the Customs and Excise Act 2018).

*Administrative arrangements*

- 45 To ensure affected parties have access to information about decisions affecting them, any decision to list an individual or entity subject to autonomous sanctions would be maintained on a sanctions register, accessible via a website maintained by the Ministry of Foreign Affairs and Trade (MFAT).
- 46 The Bill includes extensive information sharing powers to enable government agencies to share information with the Secretary of Foreign Affairs and Trade to support the making of the sanctions regulations as well as enforcement of them. These clauses are modelled on existing legislation, drawing on the information sharing provisions of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

*Human rights implications*

- 47 The Bill clearly targets Russian individuals and entities, however this is not direct discrimination on the basis of national or ethnic origin as the threshold for imposing sanctions does not distinguish between individuals of Russian nationality and those of other nationalities. The Minister of Foreign Affairs can impose sanctions whenever appropriate to respond to the Ukraine crisis, on whomever may be responsible or related to it, and their nationality is irrelevant. Moreover, the Bill also expressly allows for other countries and individuals of other nationalities to be the target of sanctions. To the extent that there is indirect discrimination against those of Russian nationality this is demonstrably justified as necessary to hold those responsible for threats to the sovereignty and territorial integrity of Ukraine to account.
- 48 Specific sanctions that would be imposed by regulation have the potential to limit freedom of movement and freedom of association, however to be lawful, any sanction regulation would need to limit those rights only to an extent that is demonstrably justified by the sanction's purpose, and in that way would be consistent with NZBORA.

*Te Tiriti o Waitangi implications*

- 49 I do not consider the proposals in this Bill raise any direct Te Tiriti o Waitangi issues. It is possible that regulations made under the Bill could have implications, and these will be considered when regulatory proposals are brought to Cabinet.

*Economic, political and diplomatic implications*

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- 50 The immediate impact on New Zealand's trade and economic interests is likely to be minimal. Our limited bilateral trade with Russia means that only a few New Zealand exporters are at risk of being caught by market disruptions and sanctions. New Zealand goods exports to Russia in the year to June 2021 were worth \$293m, 0.5% of New Zealand's total. Approximately half came from butter exports. Apples, seafood, wine and medical equipment are the only other export sectors of significance. A number of New Zealand companies have already opted to suspend trade with Russia, not just because of market disruptions and reputational issues but also because of the difficulties Russia's removal from SWIFT has caused for payments.
- 51 Russia could respond to New Zealand sanctions by placing countersanctions on New Zealand. Russia could try to target export sectors that have the most value for New Zealand, such as dairy. Russian countersanctions may therefore have an impact on New Zealand exporters that have not already chosen to redirect their trade.
- 52 s6(a)

### Impact analysis

- 53 Due to the urgency of this Bill, Regulatory Impact Analysis (RIA) has not been completed and so the paper does not meet Cabinet's RIA requirements. On behalf of respective Ministers, the Treasury's RIA team and MFAT have agreed that a post-implementation review will be completed following the passage of the Russia Sanctions Bill.

### Compliance

- 54 The Bill complies with:
- 54.1 the principles of the Treaty of Waitangi;
  - 54.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 54.3 the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper – to come);
  - 54.4 the principles and guidelines set out in the Privacy Act 2020;
  - 54.5 relevant international standards and obligations;
  - 54.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee (LDAC).

## Consultation

55 The following agencies were consulted on this paper and the Bill, noting that consultation timeframes were significantly reduced due to the urgent nature of this Bill:

55.1 Ministry of Business, Innovation and Employment, Crown Law Office, New Zealand Customs Service, New Zealand Defence Force, Ministry of Defence, Financial Markets Authority, Government Communications Security Bureau, Department of Internal Affairs, Ministry of Justice, Parliamentary Counsel Office, New Zealand Police, Ministry for Primary Industries, Department of the Prime Minister and Cabinet, Reserve Bank of New Zealand, New Zealand Security Intelligence Service, Ministry of Transport and the New Zealand Treasury;

55.2 the government caucus and other parties represented in Parliament.

56 No consultation outside government or Parliament has taken place, given the limited anticipated impact on the wider New Zealand public and businesses.

## Binding on the Crown

57 I propose that this Act be binding on the Crown.

## Financial implications

58 There are no direct financial implications from the proposals in this paper. Regulations made under this will require resourcing from MFAT and other agencies (including Police and the New Zealand Intelligence Community) – the scale of those resources will depend on the nature and extent of the sanctions imposed. These have the potential to be significant. Further advice on the resources required will be provided when regulatory proposals are put to Cabinet.

## Associated regulations

59 As framework legislation, it is proposed that the Bill is broad and flexible in its scope to empower the making of regulations to implement specified sanctions against individuals, entities or classes of individuals or entities associated with the act of aggression against Ukraine. Due to the fast moving nature of this situation, the specific classes of what and who to sanction needs to be malleable, which is best left to be implemented through the regulations.

60 The Minister of Foreign Affairs must be satisfied, before recommending the making of regulations to impose sanctions, that they are appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine or another country. No regulations are needed to operationalise the Bill from a legal perspective, however, the proposed regulations will give effect to the purpose of the Bill and allow sanctions to be imposed.



- 61 I intend to present regulations to sit under the proposed Bill to Cabinet as soon as possible following the passing of this Bill, seeking authorisation for submission to the Executive Council.

### **Other instruments**

- 62 The proposed Bill includes a provision empowering the Secretary of Foreign Affairs and Trade to issue designation notices under the proposed regulations that are deemed to be secondary legislative and disallowable instruments. Designation notices will be published in the *Gazette* and to further identify the persons, assets, or services subject to sanction in line with the descriptions in the regulations.
- 63 The use of a combination of primary empowering legislation and subsidiary legislative instruments for the application of specific measures will enable New Zealand to respond in a timely way to the evolving situation. An alternative option of implementing detailed sanctions through an Act of Parliament alone would not be sufficiently flexible to accommodate fast-moving developments on the international stage.
- 64 Any regulations or designation notices issued under the proposed Bill will have a fixed term of no more than three years unless extended.

### **Definition of Minister/department**

- 65 The Bill will be administered by MFAT. In the Bill, use of the term “Ministry” is defined as MFAT.
- 66 The Bill defines “Minister” as the Minister of Foreign Affairs, and “Secretary” as the Secretary of Foreign Affairs and Trade.

### **Commencement of legislation**

- 67 The Bill will come into force on the day after the date of Royal assent.

### **Parliamentary stages**

- 68 I intend to introduce the Bill on 8 March 2022 under urgency given the seriousness and urgency associated with Russia’s conduct toward Ukraine.
- 69 I have urgently consulted with the other Parliamentary political parties. Therefore, I propose that this Bill is introduced and passed through all its stages without going to the Foreign Affairs, Defence and Trade Committee.

### **Proactive Release**

- 70 I propose to release this paper on the introduction of the Bill.

### **Recommendations**

- 71 The Minister of Foreign Affairs recommends that the Committee:

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- 1 note that through its invasion of Ukraine, Russia (supported by Belarus) has shown a flagrant disregard for international law and breached its most fundamental norms, abdicated its responsibility to uphold global peace and security;
- 2 note that government moved quickly to institute targeted travel bans, export controls, and other diplomatic measures to respond to Russia's aggression;
- 3 note that Russia has used its veto to prevent the United Nations Security Council from taking effective measures to restore international peace and security
- 4 note that many countries have decided to take collective action to impose significant financial and other sanctions against Russia
- 5 agree that New Zealand should take similar measures in order to support the collective efforts of the international community
- 6 agree that the government should progress specific sanctions legislation, a Russia Sanctions Bill, targeted at Russia and any other country complicit in its aggression (e.g. Belarus);
- 7 agree that the Bill should:
  - 7.1 establish a framework for the implementation and enforcement of sanctions by New Zealand in response to the illegal invasion of Ukraine and any other states by the Russian Federation and other complicit states;
  - 7.2 empower the Minister of Foreign Affairs to recommend regulations to impose sanctions, which are appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine or another country, including responses which would sanction:
    - 7.2.1 persons responsible for, or associated with, the threats; and/or
    - 7.2.2 assets or services involved (or that may be involved) in the threats; and/or
    - 7.2.3 persons, assets, or services that will be, are, or have been economically or strategically relevant to a country making the threats; and/or
    - 7.2.4 persons, assets, or services from a country making the threats.
  - 7.3 include the ability for regulations to prohibit or restrict a sanctioned person from travelling to, entering or remaining in New Zealand, and deporting any sanctioned individuals if present in New Zealand;

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- 7.4 empower the Secretary of Foreign Affairs and Trade to issue designation notices outlining the specific persons, assets or services to be sanctioned under the regulations;
  - 7.5 establish a public sanctions register listing all persons, assets, or services sanctioned under designation notices;
  - 7.6 provide an expiry date on all designation notices issued, with renewal only contemplated where necessary;
  - 7.7 incorporate provisions to ensure that sanctions are able to be reviewed and revoked, and subject to exemptions where appropriate;
  - 7.8 utilise existing legislative processes and mechanisms for the monitoring and enforcement of immigration restrictions and import and export restrictions by requiring duty holders captured by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to report to the Commissioner of Police when they suspect they are in possession of assets or providing services that are subject to a sanction;
  - 7.9 confer immunity from legal proceedings on any person who takes action in good faith in order to comply with a sanction;
  - 7.10 allow civil and criminal enforcement action to be taken against individuals or entities who fail to comply with a sanction, including with appropriate criminal offences;
  - 7.11 impose extraterritorial jurisdiction for offences committed under the Bill;
  - 7.12 provide the ability to make regulations compensating any persons in relation to assets or services that are adversely affected by the imposition of sanctions.
- 8 agree that the Russia Sanctions Bill be binding on the Crown;
  - 9 approve the Russia Sanctions Bill for introduction under urgency, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
  - 10 agree that the Bill be introduced on 8 March 2022;
  - 11 agree that the Government propose that the Bill be passed under urgency, without referral to the Foreign Affairs, Defence and Trade Committee;
  - 12 invite the Minister of Foreign Affairs to return to Cabinet as soon as possible following the passing of this Bill in order to recommend regulations to implement strong and effective sanctions to respond to Russia's aggression.

Authorised for lodgement

**IN CONFIDENCE**

IN CONFIDENCE

Hon Nanaia Mahuta  
Minister of Foreign Affairs

Proactively Released  
by the Minister of Foreign Affairs

IN CONFIDENCE

Annex 1: Comparison of international action and scope of sanctions legislation

Comparison of New Zealand's response to Russia actions to that of partners

Action	Aotearoa New Zealand	Australia	United Kingdom	Canada	United States	European Union	Singapore
<b>Sanctions Regime</b>	With a UN mandate	Autonomous Sanctions	Autonomous Sanctions	Autonomous Sanctions	Autonomous Sanctions	Autonomous Sanctions	With a UN mandate
<b>Diplomatic Measures</b>	No diplomatic expulsions.  No withdrawal of Ambassador for "consultations".	No diplomatic expulsions.  No withdrawal of Ambassador for "consultations".	No diplomatic expulsions.  No withdrawal of Ambassador for "consultations".	No diplomatic expulsions.  No withdrawal of Ambassador for "consultations".	No diplomatic expulsions.  No withdrawal of Ambassador for "consultations".	No diplomatic expulsions.  No withdrawal of Ambassador for "consultations".	No diplomatic expulsions.  No withdrawal of Ambassador for "consultations".
<b>Multilateral Actions</b>	Co-sponsored HRC resolution. MFA addressed HRC. Co-led effort to persuade FOSS members to vote in favour of UN Resolution. Joined Mexico led group statement on nuclear disarmament.	Co-sponsored HRC resolution. Pre-recorded HRC address. s6(a)	Co-sponsored HRC resolution. s6(a)	Co-sponsored HRC resolution. MFA addressed HRC. Drafted open letter to the members of the Group of Friends in Defence of the Charter of the UN.	Co-sponsored HRC resolution. s6(a)	Co-sponsored HRC resolution. Led draft GA resolution. s6(a)	Co-sponsored HRC resolution. Made a strong statement at Human Rights Council. s6(a)
<b>Humanitarian Aid (based on public announcements to 3 March 2022)</b>	NZD 2m NZD 4m proposed  Total: USD 4.1m	AUD 35m  Total: USD 25.4m	GBP 120  Total: USD 159.9	CAD 100m  Total: USD 78.5m	USD 54m  Total: USD 54m	<i>Not assessed</i>	SGD 0.136m  USD 0.1m
<b>Relative Humanitarian Aid (USD/capita)</b>	USD 0.80	USD 0.99	USD 2.38	USD 2.07	USD 0.16	<i>Not available</i>	USD 0.02 (Singapore not an ODA donor)

Comparison of partners' sanctions legislation

Sanctions - Type	Aotearoa NZ (Currently)	Australia	UK	Canada	US	EU	Singapore	South Korea	Autonomous Sanctions Members Bill	Aotearoa NZ Russia Sanctions Bill
Travel bans on individuals	✓	✓	✓	✓	✓	✓	✓	✗	Significantly more limited than RSB	✓
Asset freezes on Russian citizens	✗	✓	✓	✓	✓	✓	✗	✗	Significantly more limited than RSB	✓
Limitations on Russian banks (i.e. asset freezes, restricted access to borrowing, markets and services)	✗	✓	✓	✓	✓	✓	✓	✓	Significantly more limited than RSB	✓
Restricting/banning Russian financial institutions from SWIFT network (limiting access to foreign exchange, investment, debt)	✗	✓*	✓	✓	✓	✓	✗	✓	✓*	✓*
Restricting access for Russian companies to offshore markets	✗	✓	✓	✓	✓	✓	✓	✗	Significantly more limited than RSB	✓
Prohibiting national companies from engaging with Donetsk and Luhansk	✗	✓	✓	✓	✓	✓	✗	✗	✗	✓
Export controls (i.e. military components, telecommunications, aircraft etc.)	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓
Restrictions/bans on Russian aircraft entering national airspace	✗	✓	✓	✓	✓	✓	✗	✗	Unclear	✓
Restrictions/bans on Russian owned or operated maritime vessels	✗	✗	✓	✓	✗	✗	✗	✗	Unclear	✓

\*New Zealand and Australia can support and complement these measures, but have no formal role in the administration of the SWIFT network.