

Proactive Release

Date: 23 January 2020

The following Cabinet paper and related Cabinet minute have been proactively released by the Ministry of Foreign Affairs and Trade:

International Crimes and International Criminal Court Amendment Bill – Approval for Introduction (CAB-19-MIN-0591 refers)

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.

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

Further information is available at:

<http://www.legislation.govt.nz/bill/government/2019/0190/latest/LMS245065.html>

<http://disclosure.legislation.govt.nz/bill/government/2019/190/>

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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.

Report of the Cabinet Legislation Committee: Period Ended 15 November 2019

On 18 November 2019, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 15 November 2019:

LEG-19-MIN-0176 **International Crimes and International Criminal Court Amendment Bill: Approval for Introduction** CONFIRMED
Portfolio: Foreign Affairs

Secretary of the Cabinet

Hard-copy distribution: (see over)

Hard-copy distribution:

Cabinet Legislation Committee

Minister of Health

Minister of Broadcasting, Communications and Digital Media

Minister of Civil Defence

Minister for Climate Change

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Minister of Foreign Affairs



Cabinet Legislation Committee

Minute of Decision

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International Crimes and International Criminal Court Amendment Bill: Approval for Introduction

Portfolio **Foreign Affairs**

On 12 November 2019, the Cabinet Legislation Committee:

- 1 **noted** that the International Crimes and International Criminal Court Amendment Bill holds a category 5 priority on the 2019 Legislation Programme (instructions to be provided to the Parliamentary Counsel Office in 2019);
- 2 **noted** that the Bill implement amendments to the definition of ‘war crimes’ in the Act to reflect those amendments to the Rome Statute agreed in 2010 and in 2017 regarding war crimes;
- 3 **approved** for introduction the International Crimes and International Criminal Court Amendment Bill [PCO 18741/8.0], 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 November 2019;
- 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 by 31 August 2020.

Gerrard Carter
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Chris Hipkins (Chair)
Hon David Parker
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Shane Jones
Hon Tracey Martin
Hon Peeni Henare
Hon Eugenie Sage
Michael Wood MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

Hard-copy distribution:

Minister of Foreign Affairs

Office of the Minister for Foreign Affairs

Chair, Cabinet Legislation Committee

International Crimes and International Criminal Court Amendment Bill: Approval for Introduction

Proposal

1. To make specific amendments to a number of provisions in New Zealand's International Crimes and International Criminal Court Act 2000 (the Act) to incorporate a series of amendments to the Rome Statute of the International Criminal Court (Rome Statute) concerning war crimes (war crimes amendments).

Policy

2. In June 2010, at the first International Criminal Court Review Conference in Kampala, Uganda, the Assembly of States Parties to the International Criminal Court adopted provisions to criminalise and bring within the jurisdiction of the Court the use of the following in non-international armed conflicts:
 - a) poison or poisonous weapons;
 - b) asphyxiating, poisonous or other gases and analogous liquids, materials or devices; and
 - c) expanding bullets.
3. In December 2017, the Assembly of States Parties to the Court added further provisions to criminalise and bring within the jurisdiction of the Court the use of the following in either international or non-international armed conflicts
 - d) biological weapons;
 - e) weapons or munitions employing non-detectable fragments; and
 - f) blinding laser weapons.
4. The International Crimes and International Criminal Court Amendment Bill (the Bill) will implement amendments to the definition of 'war crimes' in the act to reflect those amendments to the Rome Statute. Cabinet (CBC-18-MIN-0095) agreed to ratify the war crimes amendments subject to:

- 4.1. the satisfactory completion of the Parliamentary treaty examination process and the enactment of necessary implementing legislation; and
- 4.2. approval by Cabinet on timing of depositing the instrument of ratification.
5. The current Act provides that proceedings may be brought in respect of war crimes regardless of the nationality or citizenship or the person accused, or whether or not any part of the offence occurred in New Zealand. The effect of the Bill would be that New Zealand courts would have identical jurisdiction over the additional war crimes that the Bill incorporates.
6. Ratification of the war crimes amendments and their widespread adoption by States Parties to the Rome Statute would strengthen the rules of international humanitarian law, be a deterrent to the illegal use of force, and be consistent with New Zealand's support for the Court and the fight against impunity.
7. No aspects of the Bill are likely to be contentious. The Foreign Affairs, Defence and Trade Committee conducted an international treaty examination of the amendments and supported the government progressing the amendments. For clarity, the Bill does not implement the crime of aggression, [s9\(2\)\(f\)\(iv\)](#)
8. The Bill reflects the policy decisions taken by Cabinet (CBC-18-MIN-0095) and there are no further policy decisions sought in this paper.

Impact analysis

9. An extended national interest analysis was prepared and therefore no separate regulatory impact analysis is required. The extended national interest analysis was considered by Cabinet on 12 November 2018 and presented to the House of Representatives on 30 July 2019, in accordance with Standing Order 397(2) (presentation of national interest analyses for international treaties).

Compliance

10. The Bill complies with or does not engage the following:
 - 10.1. the Bill does not engage the principles of the Treaty of Waitangi;
 - 10.2. the Bill complies with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

- 10.3. the Bill complies with the requirements of the disclosure statement requirements (a disclosure statement has been prepared, and is attached to the paper)
- 10.4. the Bill does not engage the principles and guidelines set out in the Privacy Act 1993;
- 10.5. the Bill complies with relevant international standards and obligations;
- 10.6. the Bill complies with the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

11. Consultation has taken place with the following
 - 11.1. The New Zealand Defence Force, New Zealand Police, Ministry of Justice, Ministry of Defence, and Crown Law Office, who agree with the content of this Cabinet paper.
12. The policy behind the Bill has been considered by the Foreign Affairs, Defence and Trade Committee during parliamentary treaty examination. The Committee sought public submissions on the war crimes amendments and received four public submissions regarding the proposed war crimes amendments.
13. The Committee reported unanimously and did not bring any issues to the attention of the House.

Binding on the Crown

14. The International Crimes and International Criminal Court Act 2000 is binding on the Crown. The Bill will not affect the Act continuing to bind the Crown.
15. The Bill will not create new agencies or amend law relating to existing agencies.

Commencement of legislation

16. The Bill will come into force on a commencement date to be appointed by the Governor General by Order in Council.
17. The Government proposes to ratify the War Crimes Amendments following the completion of the Parliamentary treaty examination process and the enactment of the Bill.
18. The explanatory note to the Bill sets out the reasons for commencement by Order in Council. This form of commencement is necessary in order to co-ordinate the Bill's commencement with the entry into force, for New Zealand, of the War Crimes Amendments to the Rome Statute. Under article 121(5) of the Statute, any amendment to article 8 of the Statute comes into force for each State Party that

ratifies or accepts the amendment 1 year after the deposit of an instrument of ratification or acceptance.

Parliamentary stages

19. It is proposed that the Bill be introduced by 12 November 2019, and be passed by 31 August 2020.
20. It is proposed that the Bill be referred to the Foreign Affairs, Defence and Trade Committee.

Proactive Release

21. It is proposed that the Minister release this paper, in whole, on the introduction of the Bill to the House.

Recommendation

The Minister for Foreign Affairs recommends that the Committee:

1. **note** that the International Crimes and International Criminal Court Amendment Bill holds a category 5 priority on the 2019 Legislation Programme;
2. **note** that the Bill implement amendments to the definition of 'war crimes' in the Act to reflect those amendments to the Rome Statute agreed in 2010 and in 2017 regarding war crimes;
3. **approve** the International Crimes and International Criminal Court 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 on 12 November 2019;
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 by 31 August 2020.

Authorised for lodgement

Rt Hon Winston Peters
Minister for Foreign Affairs