



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Maritime Powers Bill Progresses in New Zealand Parliament

Submissions have now closed on the [Maritime Powers Bill](#), which has been referred to the Foreign Affairs, Defence and Trade Committee in New Zealand's Parliament.

Under the charge of Minister of Foreign Affairs Nanaia Mahuta, the Bill was introduced on June 23 this year and had its first reading on July 6.

The following is the Bill's full "general policy statement":

The Maritime Powers Bill provides New Zealand law enforcement agencies with powers to enforce New Zealand's criminal law in international waters. It does this in a manner consistent with New Zealand's rights and obligations under international law, particularly the United Nations Convention on the Law of the Sea and international human rights obligations. It reflects the fundamental importance of maritime security to New Zealand as an island nation with an extensive maritime domain.



New Zealand Minister of Foreign Affairs Nanaia Mahuta

The Bill provides powers to respond to a range of criminal offending in international waters (ie, in the contiguous zones and exclusive economic zones of New Zealand and other states and on the high seas), including:

- *offences that take place on board a New Zealand-flagged vessel in international waters*
- *offences that take place on board a foreign-flagged vessel or stateless vessel in international waters for which New Zealand has extraterritorial jurisdiction*
- *situations where an alleged offender or evidence of criminal offending is located on a New Zealand, foreign or stateless vessel in international waters*

Consistent with section 8(2) of the Crimes Act 1961, the Bill does not provide powers that can be used in respect of every offence in New Zealand's criminal law. The powers can only be used when the penalty for the offence is imprisonment for life or two or more years' imprisonment. This threshold reflects that the Bill is intended to respond to serious criminal offending at sea, particularly transnational organised crime.

The Bill provides powers to "enforcement officers", who are defined as constables, Customs officers, members of the Armed Forces, Department of Conservation rangers, and endangered species officers. This will enable the powers to be used to address a range of offending, including drugs trafficking and wildlife smuggling.

The powers in the Bill reflect those available under existing legislation, notably the Search and Surveillance Act 2012 and the Customs and Excise Act 2018. Enforcement officers may board and

search the vessel and arrest suspects. The Bill also contains powers to help manage the situation onboard the vessel, such as the power to require persons on board to remain in a particular place. The threshold at which the powers can be used also aligns with thresholds under existing legislation: where there are reasonable grounds to suspect that an offence has been, is being, or will be committed on board the vessel, and reasonable grounds to believe that the offender is on the vessel. The powers can be exercised without a warrant due to the potentially serious nature of the offending and the reality that these powers will be used at some distance from the shore where safety of life at sea is paramount. Consistent with existing legislation, the Bill requires that enforcement officers report on the use of these powers to the Commissioner of Police or chief executive of the relevant agency.

The Bill contains a broad clause that preserves the functions, duties, and powers under other Acts. This means that fisheries enforcement in New Zealand fisheries waters and on the high seas will remain subject to the Fisheries Act 1996. It also means that the New Zealand Defence Force will continue to participate in international operations without a law enforcement component in reliance on the Royal prerogative.

September 2021

