

# COMPILATION OF CONSTITUTIONAL AND LEGISLATIVE PROVISIONS ON TREATY PRACTICE OF NEW ZEALAND<sup>1</sup>

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## IMPORTANT NOTES

This document forms part of the “**Compilation of Constitutional and Legislative Provisions on Treaty Practice of Selected States and International Organisations**” (**Compilation of Provisions on Treaty Practice**) which has been published as an online resource by the British Institute of International and Comparative Law (the Institute) and the Centre for International Law, National University of Singapore (CIL). The full Compilation is available at [www.biicl.org](http://www.biicl.org) and [www.cil.nus.edu.sg](http://www.cil.nus.edu.sg)

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This document was last amended in December 2012.

**Note:**

The New Zealand constitution is to be found in formal legal documents, in decisions of the courts, and in practices (some of which are described as conventions). The Constitution Act 1986 is the principal formal statement, but does not contain provisions concerning treaties. Nor does New Zealand have legislation regulating the treaty-making process.<sup>2</sup> The relevant rules and procedures are contained in a combination of Standing Orders of the House of Representatives, and constitutional conventions that are codified and reflected in the Cabinet Manual (see below).

**1. Standing Orders of the House of Representatives 1996**

**(As amended, most recently on 5 October 2011)**

## INTERNATIONAL TREATIES

- 394 Presentation and referral of treaties
- 395 National Interest Analysis
- 396 Select committee consideration of treaties
- 397 Reports by select committees on treaties

**A Standing Order 394 – Presentation and referral of treaties**

**(1)** The Government will present the following international treaties to the House:

- (a) any treaty that is to be subject to ratification, accession, acceptance or approval by New Zealand;
- (b) any treaty that has been subject to ratification, accession, acceptance or approval on an urgent basis in the national interest;

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<sup>2</sup> See the Introduction to the Cabinet Manual 2008 for a summary of New Zealand's constitution, at: <http://www.cabinetmanual.cabinetoffice.govt.nz/introduction>

- (c) any treaty that has been subject to ratification, accession, acceptance or approval and that is to be subject to withdrawal or denunciation by New Zealand;
  - (d) any major bilateral treaty of particular significance, not otherwise covered by subparagraph (a), that the Minister of Foreign Affairs and Trade decides to present to the House;
- (2) A national interest analysis for the treaty, which addresses all the matters set out in Standing Order 395, will be presented at the same time as the treaty.
- (3) Both the treaty and the national interest analysis stand referred to the Foreign Affairs, Defence and Trade Committee.

## **B Standing Order 395 – National Interest Analysis**

- (1) A national interest analysis must address the following matters:
- (a) the reasons for New Zealand becoming party to the treaty;
  - (b) the advantages and disadvantages to New Zealand of the treaty entering into force for New Zealand;
  - (c) the obligations which would be imposed on New Zealand by the treaty, and the position in respect of reservations to the treaty;
  - (d) the economic, social, cultural and environmental effects of the treaty entering into force for New Zealand, and of the treaty not entering into force for New Zealand;
  - (e) the costs to New Zealand of compliance with the treaty;
  - (f) the possibility of any subsequent protocols (or other amendments) to the treaty, and of their likely effects;
  - (g) the measures which could or should be adopted to implement the treaty, and the intentions of the Government in relation to such measures, including legislation;
  - (h) a statement setting out the consultations which have been undertaken or are proposed with the community and interested parties in respect of the treaty;

- (i) whether the treaty provides for withdrawal or denunciation.
- (2) In the case of a treaty that has been subject to ratification, accession, acceptance or approval on an urgent basis in the national interest, the national interest analysis must also explain the reasons for the urgent action taken.
- (3) In the case of a treaty that has been subject to ratification, accession, acceptance or approval and that is subject to withdrawal or denunciation by New Zealand, the national interest analysis must address the matters set out in paragraph (1) to the full extent applicable to that proposed action.

### **C Standing Order 396 – Select committee consideration of treaties**

- (1) The Foreign Affairs, Defence and Trade Committee considers the subject area of a treaty and—
  - (a) if that subject area is primarily within that committee’s own terms of reference, retains the treaty for examination, or
  - (b) if that subject area is primarily within the terms of reference of another select committee, refers the treaty to that committee for examination.
- (2) If the Foreign Affairs, Defence and Trade Committee is not due to meet within seven days of the presentation of a treaty, and the subject area of the treaty is clearly within the terms of reference of another select committee, the chairperson may refer the treaty to that committee for examination.

### **D Standing Order 397 – Reports by select committees on treaties**

- (1) A select committee must report to the House on any treaty that has been referred to it.
- (2) In examining a treaty and the accompanying national interest analysis, the committee considers whether the treaty ought to be drawn to the attention of the House—
  - (a) on any of the grounds covered by the national interest analysis, or
  - (b) for any other reason.

The committee must include the national interest analysis as an appendix to its report.

**Note:**

The full text of the Standing Orders of the House of Representatives can be accessed on the website of the New Zealand Parliament at:  
[http://www.parliament.nz/NR/rdonlyres/65E97824-9EED-447E-832A-E4A4418EAEA2/206415/standingorders2011\\_1.pdf](http://www.parliament.nz/NR/rdonlyres/65E97824-9EED-447E-832A-E4A4418EAEA2/206415/standingorders2011_1.pdf)

## 2. Other Documentation

### **A International Treaty Making: Guidance for government agencies on practice and procedures for concluding international treaties and arrangements, September 2012**

The Ministry of Foreign Affairs and Trade has published detailed guidance for Government agencies on New Zealand's practice with respect to international treaties and arrangements, the full text of which can be accessed on the Ministry's website at:

<http://www.mfat.govt.nz/Treaties-and-International-Law/03-Treaty-making-process/index.php> (under "Related resources") or at:

<http://www.mfat.govt.nz/downloads/treaties-and-international-law/International-Treaty-Making-Guide-2012.pdf>

### **B New Zealand Cabinet Manual 2008**

This is an authoritative guide to central government decision making for Ministers, their offices, and those working within government. It is also a primary source of information on New Zealand's constitutional arrangements, as seen through the lens of the executive branch of government. The Cabinet Manual guides Cabinet's procedure, and is endorsed at the first Cabinet meeting of a new government, to provide for the orderly re-commencement of the business of government.

The provisions relating to treaty-making conduct are extracted below. The full text may be accessed on the Cabinet Office website at: <http://cabinetmanual.cabinetoffice.govt.nz/5>

#### **Chapter 5 – Cabinet Decision Making**

...

#### **Items for consideration by Cabinet**

...

## **5.12**

The following matters must be submitted to Cabinet (through the appropriate committee):

...

(m) international treaties and agreements (see paragraphs 5.73 – 5.74).

...

## **International treaties and Cabinet**

### **5.73**

Any proposal to sign an international treaty or agreement or to take binding treaty action must be submitted, with the text of the treaty, to Cabinet for approval. Binding treaty actions include ratification, accession, acceptance, definitive signature, approval, withdrawal, or denunciation of an international treaty or agreement.

### **5.74**

Where a treaty or agreement is to be presented to the House of Representatives before binding treaty action is taken, a national interest analysis must also be prepared and submitted to Cabinet. Details of the approval process relating to international treaties and agreements are set out in paragraphs 7.112 - 7.122, and in the CabGuide.

...

### *Examination of international treaties by the House*

## **General**

### **7.112**

In New Zealand, the power to take treaty action rests with the Executive. Any proposal to take action in relation to an international treaty that will indicate New Zealand's intention to be bound or that will bind New Zealand must be submitted to Cabinet for approval. An intention to be bound is usually indicated by

signature, to be followed by the subsequent binding step of ratification. Actions that bind New Zealand (that is, that formally change New Zealand's international obligations) are steps such as definitive signature (where there is no subsequent step of ratification), ratification, accession, and approval. The requirement to seek Cabinet approval also applies to proposals to sign or become bound by an amendment to a treaty, to withdraw from a treaty, or to change a reservation to a treaty.

### **7.113**

Within this context, certain treaty actions (essentially those related to multilateral treaties and major bilateral treaties of particular significance) must also, after Cabinet's approval, be presented to the House for examination, before the Executive takes binding treaty action. The Minister of Foreign Affairs determines whether a bilateral treaty is a major bilateral treaty of particular significance.

### **7.114**

The process of examination of international treaties by the House takes time - departments working on international treaty actions must factor that into their planning. Commitments cannot be entered into in advance of examination by the House. Only in very rare situations may the government take urgent treaty action in the national interest before the treaty is presented to the House. Where this occurs, the treaty must be presented as soon as possible after the binding action has been taken, together with a national interest analysis (see paragraphs 7.116 - 7.117) and an explanation from the government as to why it was considered necessary to take urgent action.

### **7.115**

The Ministry of Foreign Affairs and Trade is able to provide advice on all matters relating to international treaties and instruments of less than treaty status, such as non-binding arrangements with other governments. In particular, departments should consult the legal division of the Ministry at an early stage if they are considering entering into any negotiations that may result in action being taken on any international treaty or arrangement. The Ministry provides general guidance on international law issues and the process of presenting treaties to the House. It provides specific guidance on the required format and content of a national interest analysis. More information on the presentation of treaties to the House is contained in the [CabGuide](#).

## **National interest analysis**

### **7.116**

Presenting a treaty to the House requires the preparation of a national interest analysis. The national interest analysis addresses:

- the reasons for New Zealand taking the binding treaty action;
- the implications for New Zealand of taking the binding treaty action; and
- the means of implementing the treaty action domestically.

### **7.117**

The department with the main policy interest in the treaty, in consultation with the legal division of the Ministry of Foreign Affairs and Trade, is responsible for developing the national interest analysis according to the requirements of the Standing Orders. Drafting guidance is available from the Ministry of Foreign Affairs. The national interest analysis must be approved by Cabinet before it is presented to the House.

## **Select committee consideration**

### **7.118**

Once a treaty has been presented to the House, the treaty is referred to the Foreign Affairs, Defence and Trade Committee. This select committee may examine the treaty, or may refer the treaty to another more appropriate select committee.

### **7.119**

The government refrains from taking any binding treaty action on a treaty that has been presented to the House until the relevant select committee has reported, or 15 sitting days have elapsed from the date of presentation, whichever is sooner. The select committee may indicate to the government that it needs more time to consider the treaty, in which case the government may consider deferring taking binding treaty action.

**7.120**

The select committee may seek public submissions. In addition, the House itself may sometimes wish to give further consideration to the proposed treaty action; for example, by a debate in the House.

**7.121**

If the select committee report contains recommendations to the government, a government response to those recommendations must be presented within 90 days of the report. (See paragraphs 7.108 - 7.111, and the section entitled "Reports" in the chapter on select committees in the Standing Orders.)

**Related legislation****7.122**

Legislation necessary to bring domestic law into compliance with a treaty should not be introduced into the House until after the treaty has been presented and the time for the select committee to report has expired. Departments may, however, initiate the legislative process before that time by seeking a place on the legislation programme for the bill and issuing drafting instructions to parliamentary counsel (on a conditional basis).

### **3. Official online sources of national treaty status information**

The Ministry of Foreign Affairs and Trade provides treaty information including a list of treaties New Zealand is currently involved in negotiating, concluding, ratifying or amending, on its website at:

<http://www.mfat.govt.nz/Treaties-and-International-Law/index.php>