

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 <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=135>

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

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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. 5

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.

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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**).

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- (2) The Minister may lend money under **subsection (1)** if the Minister is satisfied that—

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- (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.

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- (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,—

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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.

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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”.

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8 Schedule amended

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

Schedule
New Schedule 1 inserted

s 6

Schedule 1
Transitional, savings, and related provisions

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s 2AA

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

1 Validation of consular loans

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- (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.

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