

DRAFT FOR CONSULTATION

Crimes (Corporate Manslaughter) Amendment Bill

Member's Bill

Explanatory note

General policy statement

The purpose of this Bill is to add the offence of corporate manslaughter to the Crimes Act 1961. Corporate manslaughter is culpable homicide when committed by a body corporate. It will be a charge that is appropriate to situations where the actions or omissions of the directors or senior managers of a body corporate cause a person's death when those actions or omissions amount to a gross breach of a relevant duty of care owed by the organisation to the deceased. The introduction of this charge remedies a gap that currently exists in New Zealand law, as demonstrated by the Pike River Mine tragedy.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force 1 year after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Crimes Act 1961 (the **principal Act**).

Clause 4 is the purpose clause.

Clause 5 inserts *new sections 177A to 177C*.

Andrew Little

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Crimes (Corporate Manslaughter) Amendment Act **2012**.
- 2 Commencement**
This Act comes into force 1 year after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Crimes Act 1961 (the **principal Act**).

4 Purpose

The purpose of this Act is to create a new offence of corporate manslaughter, which is culpable homicide committed by a body corporate.

5 New sections 177A to 177C inserted

After section 177, insert:

“177A Corporate manslaughter

- “(1) An organisation to which this section applies is guilty of an offence if the way in which any of its activities are managed or organised by its senior managers—
- “(a) causes a person’s death; and
 - “(b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.
- “(2) The organisations to which this section applies are—
- “(a) a company, including a State-owned enterprise; and
 - “(b) a firm, partnership, or body corporate carrying out functions intended to return revenue to the body corporate or to its partners or members; and
 - “(c) a public authority, including—
 - “(i) a department of the Public Service listed in Schedule 1 of the State Sector Act 1988;
 - “(ii) a Crown entity listed in Schedule 1 or 2 of the Crown Entities Act 2004;
 - “(iii) the New Zealand Defence Force;
 - “(iv) the New Zealand Police;
 - “(v) the New Zealand Security Intelligence Service;
 - “(vi) the Government Communications Security Bureau;
 - “(vii) the Parliamentary Counsel Office;
 - “(viii) the Office of the Clerk of the House of Representatives;
 - “(ix) the Parliamentary Service;
 - “(x) the Reserve Bank of New Zealand;
 - “(xi) any Office of Parliament;

- “(xii) any local authority, council organisation, or council-controlled organisation within the meaning of the Local Government Act 2002.
- “(3) For the purposes of this section,—
- “(a) a person is a **senior manager** of an organisation if he or she is a director or a committee member of a body corporate or plays a significant role in—
- “(i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised; or
- “(ii) the actual managing or organising of the whole or a substantial part of those activities; and
- “(b) **relevant duty of care** means any duty of care which, but for the accident compensation system, may be said to exist as a matter of law, whether the law of negligence or any other law; and
- “(c) a breach of a duty of care by an organisation is a **gross breach** if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances.
- “(4) An organisation that is guilty of corporate manslaughter is liable on conviction on indictment to a fine not exceeding \$10 million.
- “(5) Any senior manager whose acts or omissions contributed materially to the elements of an offence leading to the conviction under this section of an organisation is liable to a sentence of imprisonment not exceeding 10 years.
- “(6) Without limiting **subsections (4) or (5)**, an order, to be known as a publicity order may be made on the conviction under this section of an organisation requiring the organisation to publicise in a specified manner—
- “(a) the fact that it has been convicted of the offence; and
- “(b) specified particulars of the offence, including the names and position descriptions of any senior managers convicted under **subsection (5)**; and
- “(c) the amount of any fine imposed on the organisation and any term of imprisonment imposed on any individual; and

- “(d) any other matter that the court considers just in the circumstances.
- “(7) A publicity order made under **subsection (6)**—
 - “(a) must specify a period within which the order must be complied with; and
 - “(b) may specify the manner and form of publication, including whether publication should be in the organisation’s statutory or other annual report.

“**177B Public policy decisions, exclusively public functions, and statutory inspections**

- “(1) Any duty of care owed by a public authority in respect of a decision as to matters of public policy (including, in particular, the allocation of public resources or the weighing of competing public interests) is not a **relevant duty of care**.
- “(2) Any duty of care owed in respect of things done in the exercise of an exclusively public function is not a **relevant duty of care** unless the duty of care arises through the public authority being an owner of premises or other property, or an occupier of premises.
- “(3) In this section,—
 - “**exclusively public function** means a function that falls within the prerogative of the Crown or is, by its nature, exercisable only with authority conferred—
 - “(a) by the exercise of that prerogative; or
 - “(b) by or under a statutory provision
 - “**statutory function** means a function conferred by or under a statutory provision.

“**177C Inclusions**

- “(1) For the avoidance of doubt, a person and a body corporate can both be guilty of appropriate applicable offences in respect of the same acts or omissions and the guilt or innocence of one does not affect, and is irrelevant to, the guilt or innocence of the other.
- “(2) A person cannot be guilty of aiding and abetting an offence under **section 177A**.”