



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Organised Crime and Anti-corruption Legislation Bill

05.02.2015

SUBMISSION ON THE ORGANISED CRIME AND ANTI-CORRUPTION LEGISLATION BILL

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Organised Crime and Anti-corruption Legislation Bill (Bill).
2. The Bill is intended to implement certain of New Zealand's international obligations and give effect to the Government's policy of strengthening the law to combat organised crime and corruption.
3. The Law Society's submission focuses on discrete, technical aspects of the Bill relating to the amendments to the Crimes Act 1961. The Law Society recommends three amendments arising from these matters:
 - (a) An amendment to clause 4, dealing with the definition of a "crime involving dishonesty" in section 2(1) of the Crimes Act (see paragraphs 4 – 7 below);
 - (b) An amendment to clause 6, dealing with the definition of "employee" for the purposes of the amendments to section 105C of the Crimes Act (see paragraphs 8 – 10 below); and
 - (c) An amendment to clause 12, extending the scope of the existing money laundering offence in section 243 of the Crimes Act (see paragraphs 11 – 0 below).

Definition of a "crime involving dishonesty": clause 4

4. Clause 4 of the Bill modifies the definition of a "crime involving dishonesty" in section 2(1) of the Crimes Act, as follows:
 - (a) Limb (a) of the new definition adds the corruption offences under sections 100 – 105 of the Crimes Act.
 - (b) Limb (b) of the new definition essentially retains (with inconsequential syntactical adjustments) the existing words of the definition in section 2(1) ("any crime described in Part 10 except the crimes described in sections 267 to 272").
 - (c) Limb (c) of the new definition adds the corruption offences relating to the giving of gifts and secret rewards under sections 3(1), 4(1), and 8(1) of the Secret Commissions Act 1910.
5. Regarding limb (b) of the definition, it is possible that the drafters may have proceeded on an incorrect assumption that the exclusion of the offences in sections 267 – 272 means that

all of the offences in Part 10 from section 267 onwards have been excluded. We raise this possibility because, under the existing definition:

- (a) The offences set out in Part 10 that fall prior to section 267 (i.e., section 220 – 266) are clearly crimes of dishonesty.
 - (b) The offences set out in sections 267 – 272 are expressly excluded.
 - (c) Almost all of the offences in sections 273 – 305 have been repealed.
6. If this provision has been drafted on the assumption that all of the offences in Part 10 listed subsequently to section 272 have been repealed, that would be an oversight. All of the offences between section 273 and section 305 have been repealed, except for section 298A (“Causing disease or sickness in animals”) and section 298B (“Contaminating food, crops, water, or other products”).
7. The Law Society therefore submits that the Select Committee should consider whether it is intended that the offences in sections 298A and 298B should be included as crimes of dishonesty. Those offences are crimes against property, rather than crimes of dishonesty. If it is not intended that those offences should be included in the definition of “crimes of dishonesty”, then the Law Society suggests that the words “and sections 298A to 298B” should be inserted into limb (b) of the new definition.

Definition of “employee”: clause 6

8. The Law Society proposes a minor amendment to the definition of “employee” in the proposed new section 105C(1).
9. The definition of “employee” means, in relation to a body corporate or corporation sole, “an individual who is an employee, agent, or officer of that body corporate or corporation sole”.
10. This definition will be intended to cover directors of a company. The Law Society considers that the definition achieves this objective. A company is a type of body corporate and a director is an officer of the company. However, in many statutory contexts, a distinction is drawn between directors, officers, employees, and agents of a company. When a provision is intended to apply to each of those classes of individual, they are often listed together. Accordingly, for the avoidance of doubt, the Law Society submits that the word “director”

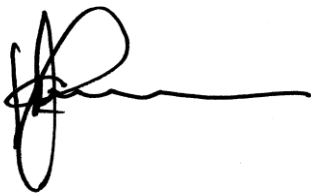
should be added before the words “or officer” in the definition of “employee”. This would be consistent with the apparent intent of the provision and the policy behind the reforms.

Penalties for money laundering: clause 12

11. Clause 12 amends the scope of the existing offence for money laundering in section 243 of the Crimes Act. Most significantly, clause 12 will remove the requirement that the property that is the subject of the money laundering transaction (or at least part of that property) must be “the proceeds of a serious offence”. Instead, it is sufficient that the property is the proceeds of an offence punishable by New Zealand law.
12. Given that the amendments to section 243 reflect a significant extension of liability, it would be desirable that consideration be given to whether the maximum sentences provided for should be amended. A person who launders proceeds under \$1,000 is liable to a five-year maximum under section 243. This can be contrasted with section 247, under which a person who receives the proceeds of an offence of dishonesty where those proceeds are valued under \$1,000 only risks a one-year sentence.
13. The Law Society recommends that consideration be given to structuring the sentencing under section 243(3) in terms of the value of the proceeds laundered, consistent with the approach taken for theft (section 223), obtaining by deception (section 241), and receiving stolen property (section 247).

Conclusion

14. The Law Society does not wish to be heard.

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Chris Moore
President
5 February 2015