



NEW ZEALAND  
LAW SOCIETY

NZLS EST 1869

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# Maritime Crimes Amendment Bill

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*18/08/2016*

## Submission on the Maritime Crimes Amendment Bill

### 1 Introduction

- 1.1 The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Maritime Crimes Amendment Bill (Bill). This submission recommends three amendments to the Bill. The purpose of the amendments is to promote consistency of the statute book and to ensure that peaceful protest is not inadvertently caught by the crimes created by the Bill.

### 2 Definition of terrorism

- 2.1 First, the Law Society recommends that the terrorism offences be amended so that the scope of “terrorism” under the Bill is consistent with the scope of “terrorism” under the Terrorism Suppression Act 2002.
- 2.2 The Bill treats terrorism as intentionally doing certain specified acts “with the purpose of intimidating a population or compelling a government or an international organisation to do or to abstain from doing any act” (see proposed new section 4A(1) (inserted by clause 10) and proposed new section 5A(1) (inserted by clause 12).
- 2.3 Terrorism is defined more narrowly in the Terrorism Suppression Act. The Act defines a terrorist act as an act intended to cause certain specified outcomes that is **“carried out for the purpose of advancing an ideological, political or religious cause, and with the ... intention (a) to induce terror in a civil population; or (b) to unduly compel or to force a government or an international organisation to do or abstain from doing any act”** (s 5(2)). The key differences with the approach in the Bill are shown in bold.
- 2.4 As a matter of good legislative drafting, the definitions should be harmonised unless the Bill is intended to cover a different scope of activities than that covered by the Terrorism Suppression Act.
- 2.5 The definition in the Terrorism Suppression Act is more appropriate as it sets a higher threshold that excludes, for instance, legitimate peaceful protest. It could be argued that legitimate peaceful protests have the purpose of “compelling a government or an international organisation to do or to abstain from doing any act” and so fall within that part of the definition under the Bill. Presumably this is not intended and it is unlikely that the courts would read the Act in this way. But any doubt could be avoided by using the same language as in the Terrorism Suppression Act, in particular the “unduly” compelling standard and requiring that the acts in question also have the purpose of “advancing an ideological, political or religious cause”.

### 3 Peaceful protest exclusion

- 3.1 Second, the Law Society recommends that the Bill be amended by inserting a provision similar to that in section 5(5) of the Terrorism Suppression Act. Section 5(5) provides that:

To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person –

- (a) is carrying out an act for a purpose, or with an intention, specified in subsection (2);  
or  
(b) intends to cause an outcome specified in subsection (3).

- 3.2 A similar provision should be inserted in proposed new sections 4A and 5A to ensure that peaceful protest is not inadvertently caught by the Bill.

#### **4 Criminal intent**

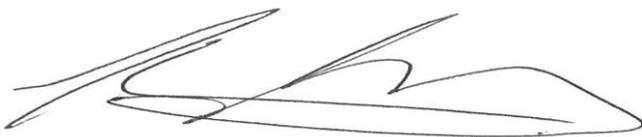
- 4.1 Third, the Law Society recommends that proposed new section 4A(1)(c) be amended to read “uses a ship in a manner that **is intended to** cause death or serious injury or damage” (new words shown in bold).
- 4.2 As presently drafted, if an accident occurs during a peaceful maritime protest (the purpose of which is to compel a government to make a policy change) and the result of the accident is that a person dies, is seriously injured or damage is caused, on one reading of the Bill a terrorism offence has been committed. This is because the requirement for intention appears to relate only to the “use of the ship” and not to the consequences of its use. The Law Society doubts that this is the intended effect of the Bill as this would in effect create an offence of strict liability. Given the serious nature of the offences and the significant penalties, this is inappropriate. This should be rectified by making it plain that the consequences of the use of the ship (to cause death or serious injury or damage) must also be intended.

#### **5 Proposed amendments can be made even though the Bill gives effect to international treaties**

- 5.1 Finally, the Law Society acknowledges that:
- (a) the purpose of the Bill is to give effect to the provisions of international treaties; and
  - (b) if the Committee adopts the Law Society’s proposed amendments to the Bill the language of the crimes in the Maritime Crimes Act 1999 will not be identical to the language in the treaties.
- 5.2 This is a valid way of giving effect to the provisions of the treaties. The Legislation Advisory Committee Guidelines on Process and Content of Legislation (2014 edition) provide that one way of implementing a treaty is to reflect the wording of the treaty in the body of legislation (as the Bill does). When this method of incorporation is adopted, “[t]he wording may be reflected verbatim or, if necessary, translated to more accurately reflect local conditions” (see chapter 8, part 2). The Law Society’s proposed amendments come within that category.
- 5.3 In addition, the second and third proposed changes reflect the way that courts would interpret the Bill, particularly in light of the rights and freedoms contained in the New Zealand Bill of Rights Act 1990. Given this, it would be better (and provide more certainty) to make this interpretation plain in the legislation itself rather than leaving the courts to clarify these matters.

#### **6 Conclusion**

- 6.1 The Law Society wishes to be heard.



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