

DRAFT FOR CONSULTATION

Crimes (Corporate Homicide) Amendment Bill

Member's Bill

Explanatory note

General policy statement

Companies and organisations must be responsible about health and safety in the conduct of their business or activities. There are serious consequences for individuals whose actions cause the death of a person, but the same consequences currently do not apply to legal entities.

This Bill looks to ensure that businesses and other organisations prioritise protecting the health and safety of people impacted by their activities through the introduction of an offence of corporate homicide. This new offence provides that a person will commit the offence if they have a relevant legal duty of care, and engage in conduct that exposes any individual to whom that duty is owed to a risk of death or serious injury, are reckless as to that risk, and their conduct results in the death of the individual.

Other jurisdictions around the world have a similar offence and the purpose of introducing such an offence is to encourage a good health and safety culture but also to bring accountability and justice to individuals and the families of those wrongly killed by an entity.

This Bill would bring accountability and responsibility to those who do business or other activities in New Zealand when there is a tragic death that could have been avoided.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides for this Bill to come into force on 12 months after Royal assent.

Clause 3 identifies the Crimes Act 1961 (the **principal Act**) as the Act being amended by the Bill.

Part 1

Amendment to Principal Act

Clause 4 inserts *new sections 181A and 181B* into the principal Act to provide for a new offence of corporate homicide.

Part 2

Consequential amendments

Clause 5 consequentially amends the Companies Act 1993 to provide for the disqualification of a director on the basis of a conviction for the new offence of corporate homicide.

Clause 6 consequentially amends the Crown Organisations (Criminal Liability) Act 2002, to recognise that a Crown organisation may be charged with the new offence of corporate homicide.

Clause 7 contains an amendment to the Sentencing Act 2002 to provide for a new sentencing option of an adverse publicity order in respect of an offence of corporate homicide.

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Part 1

Amendment to principal Act

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Crimes (Corporate Homicide) Amendment Act **2024**.

2 Commencement

This Act comes into force on the day that is 12 months after the date of Royal assent.

3 Principal Act

This Act amends the Crimes Act 1961.

Part 1
Amendment to principal Act**4 New section 181A and cross-heading inserted**

After section 181, insert:

*Corporate homicide***181A Corporate homicide**

- (1) A person commits an offence if the person—
 - (a) has a relevant legal duty of care; and
 - (b) engages in conduct that exposes any individual to whom that duty is owed to a risk of death or serious injury; and
 - (c) intends to cause the individual's death or serious injury, or is reckless as to the risk to the individual of death or serious injury; and
 - (d) that conduct causes the death of the individual.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) if the person is an individual, to imprisonment for life;
 - (b) in any other case, to a fine not exceeding \$10 million.
- (3) Prosecution of the offence in this section is restricted in the following ways:
 - (a) no one may be charged as a party to an offence against this section:
 - (b) an individual cannot be charged with an offence against this section in respect of actions taken solely in their personal, private, capacity.
- (4) If a person (**A**) that commits an offence against **subsection (1)** is a body corporate or Crown organisation (as that term is defined in section 4 of the Crown Organisations (Criminal Liability) Act 2002),—
 - (a) any individual concerned in the management of A who directed, authorised, assented to, acquiesced in, or participated in the conduct of the offence is guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not A has been prosecuted or convicted; and

- (b) despite any law or rule to the contrary, an individual and A can both be guilty of an offence against this section 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.
- (5) If a person (B) that commits an offence against **subsection (1)** is a body corporate that is a subsidiary (as that term is defined in section 5 of the Companies Act 1993) of another person (C), and C directed, authorised, assented to, acquiesced in, or participated in the conduct of the offence, then—
 - (a) C is guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not B has been prosecuted or convicted; and
 - (b) despite any law or rule to the contrary, B and C can both be guilty of an offence against this section 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.
- (6) In this section, **relevant legal duty of care**—
 - (a) means any duty of care which exists as a matter of law, including—
 - (i) a duty in respect of which a person is barred, under section 317 of the Accident Compensation Act 2001, from bringing proceedings for breach of the duty;
 - (ii) a duty under subpart 2 of Part 2 of the Health and Safety at Work Act 2015; but
 - (b) does not include any duty of care owed by a public authority to the extent that it relates to matters of public policy regarding the prudent stewardship of public funds or public resources.

181B Attribution of conduct and state of mind for the purposes of section 181A

- (1) Conduct engaged in on behalf of a person (A) by any of the following must be treated, for the purposes of **section 181A**, as having been engaged in also by A:
 - (a) an officer, employee, or agent of A acting within the scope of their actual or apparent authority;
 - (b) any other person at the direction or with the consent or agreement (whether express or implied) of an officer, employee, or agent of A, given within the scope of the actual or apparent authority of the officer, employee, or agent.
- (2) In any prosecution for an offence against **section 181A**, to establish the state of mind of A, it is sufficient to show that an officer, employee, or agent of A, acting within the scope of his or her actual or apparent authority, had that state of mind.

- (3) In this section, **state of mind**, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose.

Part 2

Consequential amendments

5 Amendment to Companies Act 1993

- (1) This section amends the Companies Act 1993.
- (2) After section 383(1)(a), insert:
- (aa) a person—
- (i) has been convicted of an offence under **section 181A** of the Crimes Act 1961; or
 - (ii) has been a director of a company that has been convicted of an offence under **section 181A** of the Crimes Act 1961; or

6 Amendments to Crown Organisations (Criminal Liability) Act 2002

- (1) This section amends the Crown Organisations (Criminal Liability) Act 2002.
- (2) In section 3(b), after “the Building Act 2004,”, insert “**section 181A** of the Crimes Act 1961,”
- (3) After section 6(1)(a), insert:
- (ab) an offence against **section 181A** of the Crimes Act 1961:

7 Amendments to Sentencing Act 2002

- (1) This section amends the Sentencing Act 2002.
- (2) In section 4(4), after “the Building Act 2004,”, insert “**section 181A** of the Crimes Act 1961,”.
- (3) After section 111, insert:

Adverse publicity orders

111AA Adverse publicity orders

- (1) If an offender is convicted of an offence against **section 181A** of the Crimes Act 1961, the court may make an order (an **adverse publicity order**), requiring the offender to take either or both of the following actions within the period specified in the order:
- (a) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed, and any other related matter:
 - (b) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed, and any other related matter.

- (2) An adverse publicity order must specify a period within which the order must be complied with.
- (3) The court may make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.