

Crimes Amendment Bill

(Divided from the Organised Crime and Anti-corruption Legislation Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Organised Crime and Anti-corruption Legislation Bill as reported from the Law and Order Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- this Bill comprising clauses 1 and 2, and Part 1
- Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill comprising subpart 1 of Part 2
- Companies Amendment Bill comprising subpart 2 of Part 2
- Criminal Investigations (Bodily Samples) Amendment Bill comprising subpart 3 of Part 2
- Criminal Proceeds (Recovery) Amendment Bill comprising subpart 4 of Part 2
- Customs and Excise Amendment Bill (No 3) comprising subpart 5 of Part 2
- Extradition Amendment Bill comprising subpart 5A of Part 2
- Financial Service Providers (Registration and Dispute Resolution) Amendment Bill comprising subpart 5B of Part 2
- Financial Transactions Reporting Amendment Bill comprising subpart 6 of Part 2
- Income Tax Amendment Bill comprising subpart 7 of Part 2
- Limited Partnerships Amendment Bill comprising subpart 7A of Part 2
- Misuse of Drugs Amendment Bill comprising subpart 8 of Part 2
- Mutual Assistance in Criminal Matters Amendment Bill comprising subpart 9 of Part 2
- Policing Amendment Bill comprising subpart 10 of Part 2
- Secret Commissions Amendment Bill comprising subpart 11 of Part 2.

Hon Amy Adams

Crimes Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Crimes Amendment Act **2015**.

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

4 Section 2 amended (Interpretation)

In section 2(1), replace the definition of **crime involving dishonesty** with: 10

crime involving dishonesty means any of the crimes or offences described in—

(a) sections 100 to **105F**:

(b) Part 10, except sections 267 to 272, 298A, and 298B:

(c) the Secret Commissions Act 1910 15

5 Section 98D replaced (Trafficking in people by means of coercion or deception)

Replace section 98D with:

98D Trafficking in persons

(1) Every person is liable to the penalty stated in **subsection (2)** who arranges, organises, or procures— 20

- (a) the entry of a person into, or the exit of a person out of, New Zealand or any other State—
- (i) for the purpose of exploiting or facilitating the exploitation of the person; or
- (ii) knowing that the entry or exit of the person involves 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both; or
- (b) the reception, recruitment, transport, transfer, concealment, or harbouring of a person in New Zealand or any other State—
- (i) for the purpose of exploiting or facilitating the exploitation of the person; or
- (ii) knowing that the reception, recruitment, transport, transfer, concealment, or harbouring of the person involves 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both.
- (2) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both.
- (3) Proceedings may be brought under this section even if—
- (a) parts of the process by which the person was exploited, coerced, or deceived were accomplished without an act of exploitation, coercion, or deception:
- (b) the person exploited, coerced, or deceived—
- (i) did not in fact enter or exit the State concerned; or
- (ii) was not in fact received, recruited, transported, transferred, concealed, or harboured in the State concerned.
- (4) For the purposes of this section, **exploit**, in relation to a person, means to cause, or to have caused, that person, by an act of deception or coercion, to be involved in—
- (a) prostitution or other sexual services:
- (b) slavery, practices similar to slavery, servitude, forced labour, or other forced services:
- (c) the removal of organs.

6 Section 105C amended (Bribery of foreign public official)

- (1) In section 105C(1), insert in their appropriate alphabetical order:
- business** includes the provision of international aid
- employee**, in relation to a body corporate or corporation sole, means an individual who is an employee, agent, director, or officer of that body corporate or corporation sole

- (2) In section 105C(1), definition of **routine government action**, paragraph (b), after “official”, insert “; or”.
- (3) In section 105C(1), definition of **routine government action**, after paragraph (b), insert:
- (c) any action that provides— 5
- (i) an undue material benefit to a person who makes a payment; or
- (ii) an undue material disadvantage to any other person.
- (3A) In section 105C(2), replace “Every one is liable to imprisonment for a term not exceeding 7 years” with “Every person commits an offence”.
- (4) After section 105C(2), insert: 10
- (2A) A body corporate or corporation sole commits an offence against subsection (2) if—
- (a) an employee of the body corporate or corporation sole does an act that would constitute an offence under subsection (2); and
- (b) the employee does the act, in whole or in part, with the intent to benefit the body corporate or corporation sole; and 15
- (c) the employee, in doing the act, is acting within the scope of their authority as an employee of the body corporate or corporation sole.
- (2B) A body corporate or corporation sole does not commit an offence under subsection (2) if it has taken reasonable steps to prevent the offence. 20
- (2C) If a body corporate or corporation sole is charged with an offence under subsection (2), it is to be presumed, unless the body corporate or corporation sole puts the matter at issue, that it did not take reasonable steps.
- (2D) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding 7 years, or a fine, or both. 25
- (2E) A fine imposed under **subsection (2D)** cannot exceed the greater of—
- (a) \$5 million; or
- (b) if a court is satisfied that an offence occurred in the course of producing a commercial gain, and if the value of that commercial gain can be readily ascertained, 3 times the value of that commercial gain. 30
- (5) Replace section 105C(4) with:
- (4) **Subsections (2A), (2B), and (2C)**—
- (a) apply only in respect of offences under subsection (2) and section 105D; and
- (b) do not preclude the liability of a body corporate or corporation sole under any other provision of this Act. 35

6A Section 105D amended (Bribery outside New Zealand of foreign public official)

Repeal section 105D(4).

7 Section 105E replaced (Exception for acts lawful in country of foreign public official)

Replace section 105E with:

105E Corruption of foreign public officials

- (1) Every person specified in **subsection (2)** who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for that person or another person in respect of any act or omission by an official in the official's official capacity (whether or not the act or omission is within the scope of the official's authority) is liable to imprisonment for a term not exceeding 7 years. 10
- (2) **Subsection (1)** applies to—
- (a) any foreign public official who has committed the offence while in New Zealand: 15
- (b) any person employed as a foreign public official who has committed the offence while outside New Zealand if the person is—
- (i) a New Zealand citizen; or
- (ii) ordinarily resident in New Zealand; or
- (iii) a body corporate incorporated in New Zealand; or 20
- (iv) a corporation sole incorporated in New Zealand.
- (3) Nothing in this section limits any immunity that a foreign public official or person has under this Act or any other enactment.

105F Trading in influence

Every person is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for that person or another person with intent to influence an official in respect of any act or omission by that official in the official's official capacity (whether or not the act or omission is within the scope of the official's authority). 25
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8 Section 106 amended (Restrictions on prosecution)

In section 106(1), replace “and 105D” with “105D, **105E, and 105F**”.

9 Section 228 amended (Dishonestly taking or using document)

In section 228, insert as subsection (2):

- (2) Every person is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document knowing that— 35

<p>(a) the document was, dishonestly and without claim of right, taken, obtained, or used; and</p> <p>(b) the document was dealt with in the manner specified in paragraph (a) with intent to obtain any property, service, pecuniary advantage, or valuable consideration.</p>	5
10 New sections 228A to 228C inserted	
After section 228, insert:	
228A Designing, manufacturing, or adapting goods with intent to facilitate commission of crimes involving dishonesty	
Every person is liable to imprisonment for a term not exceeding 3 years who designs, manufactures, or adapts goods with intent to facilitate the commission of a crime involving dishonesty.	10
228B Possessing, selling, or disposing of goods designed, manufactured, or adapted with intent to facilitate commission of crimes involving dishonesty	
Every person is liable to imprisonment for a term not exceeding 3 years who, without lawful authority or excuse, possesses, sells, or disposes of any goods designed, manufactured, or adapted to facilitate the commission of a crime involving dishonesty, with intent to use, or to enable another person to use, the goods to facilitate the commission of a crime involving dishonesty.	15
228C Possessing goods capable of being used to facilitate crimes involving dishonesty with intent to facilitate commission of those offences	20
Every person is liable to imprisonment for a term not exceeding 3 years who, without lawful authority or excuse, possesses any goods capable of being used to facilitate the commission of a crime involving dishonesty (other than those specified in sections 227, 233, and 264) with intent to use the goods to facilitate the commission of that offence.	25
11 Section 240 amended (Obtaining by deception or causing loss by deception)	
After section 240(1), insert:	
(1A) Every person is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document or thing capable of being used to derive a pecuniary advantage knowing that, by deception and without claim of right, the document or thing was, or was caused to be, delivered, executed, made, accepted, endorsed, or altered.	30
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12 Section 243 amended (Money laundering)	
(1) In section 243(1), insert in its appropriate alphabetical order:	
act includes an omission	

offence means an offence (or any offence described as a crime) that is punishable under New Zealand law, including any act, wherever committed, that would be an offence in New Zealand if committed in New Zealand

- (2) In section 243(1), definition of **proceeds**, replace “a serious offence” with “an offence”. 5
- (3) In section 243(1), repeal the definition of **serious offence**.
- (4) In section 243(2) and (3), replace “a serious offence” with “an offence” in each place.
- (4A) In section 243(4), replace “for the purpose of concealing any property or enabling another person to conceal any property,” with “in concealing any property or by enabling any person to conceal any property.” 10
- (5) After section 243(4), insert:
- (4A) Despite anything in subsection (4), the prosecution is not required to prove that the defendant had an intent to— 15
- (a) conceal any property; or
- (b) enable any person to conceal any property.
- (6) In section 243(5), delete “serious” in each place.
- (7) After section 243(6), insert:
- (7) To avoid doubt, for the purposes of the definition of offence in subsection (1), New Zealand law includes, but is not limited to, the Misuse of Drugs Act 1975. 20

13 Section 243A replaced (Charges for money laundering)

Replace section 243A with:

243A Charges for money laundering

A person may be charged under section 243(2) or (3) in respect of any property that is the proceeds of an offence to which section 243(2) or (3) applies even though the person who committed the offence— 25

- (a) has not been charged with that offence; or
- (b) has not been convicted of that offence.

14 Section 244 amended (Defence of enforcement of enactment)

In section 244(a), replace “this section, any other provision of this Act, or any other enactment relating to a serious offence” with “section 243”. 30

15 Section 245 replaced (Section 243 not to apply to certain acts committed outside New Zealand)

Replace section 245 with:

245 Application of section 243 to acts outside New Zealand

- (1) Section 243 applies to an act that has occurred outside New Zealand and that is alleged to constitute an offence resulting in proceeds only if—
- (a) the act was an offence under the law of the place where and when it occurred; or
 - (b) it is an act to which section 7 or 7A of this Act applies; or
 - (c) an enactment provides that the act is an offence in New Zealand, and no additional requirement exists for the act to be an offence in the place where and when it occurred.
- (2) If a person is charged with an offence under section 243 and **subsection (1)(a)** applies, it is to be presumed, unless that person puts the matter at issue, that the act was an offence under the law of the place where and when it occurred.

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16 Section 256 amended (Forgery)

After section 256(4), insert:

- (5) Every person is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any false document knowing it to be false and to have been made with the intention that it be used or acted on (in New Zealand or elsewhere) as genuine.

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17 Section 258 amended (Altering, concealing, destroying, or reproducing documents with intent to deceive)

After section 258(2), insert:

- (3) Every person is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document knowing that—
- (a) the document was altered, concealed, or made, in whole or in part, as a reproduction of another document; and
 - (b) the document was dealt with in the manner specified in **paragraph (a)** with intent to—
 - (i) obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or
 - (ii) cause loss to any other person.

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Crimes Amendment Bill

Legislative history

21 October 2015

Divided from Organised Crime and Anti-corruption Legislation
Bill (Bill 219–2) as Bill 219–3A