



# Crown Organisations (Criminal Liability) Act 2002

Public Act 2002 No 37  
Date of assent 17 October 2002  
Commencement see section 2

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**The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the Crown Organisations (Criminal Liability) Act 2002.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**3 Purpose**

The purpose of this Act is to—

- (a) implement recommendations of the report of the Royal Commission of Inquiry into the collapse of a viewing platform at Cave Creek near Punakaiki on the West Coast (the **Noble report**);
- (b) enable the prosecution of Crown organisations for offences under the Building Act 1991 and the Health and Safety in Employment Act 1992;
- (c) enable injunctions to be granted requiring Crown organisations to comply with the Building Act 1991;
- (d) make related amendments to other enactments.

**Part 1****Criminal liability of Crown organisations****4 Interpretation**

In this Act, unless the context otherwise requires,—

**Crown entity** means a body or statutory officer named or described in the Fourth Schedule of the Public Finance Act 1989

**Crown organisation** means a Crown entity, government department, or government-related organisation

**government department** means a government department named in the First Schedule of the State Sector Act 1988

**government-related organisation** means—

- (a) the Audit Office;
- (b) the New Zealand Defence Force;
- (c) the New Zealand Police;
- (d) the New Zealand Railways Corporation;

- (e) the Office of the Clerk of the House of Representatives:
- (f) the Office of the Ombudsmen:
- (g) the Office of the Parliamentary Commissioner for the Environment:
- (h) the Parliamentary Counsel Office:
- (i) the Parliamentary Service

**Office of Parliament** has the same meaning as in section 2(1) of the Public Finance Act 1989.

## **5 Act binds Crown**

This Act binds the Crown.

## **6 Prosecutions against Crown organisations**

- (1) A Crown organisation may be prosecuted (by the bringing of proceedings in the manner provided for in the Summary Proceedings Act 1957) for any of the following offences:
  - (a) an offence against section 80 of the Building Act 1991:
  - (b) an offence under section 49 or section 50 of the Health and Safety in Employment Act 1992.
- (2) This section does not affect any liability of a Crown organisation that arises independently of this section to prosecution for an offence.

## **7 Legal status of certain Crown organisations**

A Crown organisation that is not a body corporate has a separate legal personality for the purposes of—

- (a) compliance with the obligations imposed by the Building Act 1991 and the Health and Safety in Employment Act 1992; and
- (b) the bringing, hearing, and determination of proceedings against it for an offence referred to in section 6; and
- (c) the imposition of sentence if that organisation is convicted; and
- (d) the enforcement of any sentence imposed on that organisation.

## **8 Conduct of proceedings**

- (1) Proceedings brought against a Crown organisation for an offence referred to in section 6 must, as far as practicable, be

brought, heard, and determined in the same manner as proceedings against a body corporate for an offence of the same kind.

- (2) Proceedings brought against a Crown organisation for an offence referred to in section 6 must be instituted against the organisation in its own name, and must not cite the Crown as a defendant.
- (3) A Crown organisation is liable on conviction for an offence referred to in section 6 to the same penalties that could be imposed on any body corporate convicted of the same offence.
- (4) Despite subsection (3), a court may not sentence a Crown organisation to pay a fine in respect of an offence referred to in section 6.
- (5) This section is subject to section 54 of the Health and Safety in Employment Act 1992 and sections 77A and 115A of the Summary Proceedings Act 1957.

## **9 Rights and privileges of Crown organisations**

- (1) A Crown organisation that is charged with an offence referred to in section 6 has, in relation to the charge and the hearing and determination of the charge, the same rights and privileges as a body corporate charged with an offence of the same kind.
- (2) This section is subject to section 10.

## **10 Restrictions on privilege against self-incrimination**

- (1) Despite section 9 and any other enactment or rule of law, no person may invoke the privilege against self-incrimination on behalf of a Crown organisation as a ground for refusing—
  - (a) to give any evidence or produce any thing at the hearing of proceedings against a Crown organisation for an offence referred to in section 6; or
  - (b) to supply information or make a statement in response to any request or requirement to supply information or make a statement made under—
    - (i) section 31 of the Health and Safety in Employment Act 1992; or
    - (ii) section 19 of the Ombudsmen Act 1975; or
    - (iii) section 91 of the Privacy Act 1993; or

- (iv) section 26 of the Public Finance Act 1977; or
  - (v) section 45B of the Public Finance Act 1989; or
  - (vi) section 9 or section 10 of the State Sector Act 1988; or
  - (c) a request for official information made in accordance with section 12 of the Official Information Act 1982; or
  - (d) to supply information requested by—
    - (i) the Minister of the Crown or other person for the time being responsible for the Crown organisation; or
    - (ii) a committee of Parliament.
- (2) Subsection (1) does not affect any right of an individual to invoke the privilege against self-incrimination in relation to any act or omission of that individual.

## **11 Crown immunity not to apply in respect of offences under this Act**

No person is immune from prosecution for an offence referred to in section 6 by reason that the person is an employee or agent of the Crown, or a contractor engaged to provide services to the Crown, or is acting in any other capacity for, or on behalf of, the Crown.

## **12 Appropriation**

- (1) Any reparation, compensation, or costs imposed by a court on a department or Office of Parliament as a consequence of the prosecution of that organisation for an offence referred to in section 6 may be paid by that organisation out of its funds without further appropriation than this section.
- (2) In subsection (1), **department** has the same meaning as in section 2(1) of the Public Finance Act 1989.

## **Part 2**

### **Amendments to other Acts**

#### *Amendments to Building Act 1991*

## **13 Interpretation**

Section 2 of the Building Act 1991 is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002

“**employee** includes,—

“(a) in relation to any Crown organisation, the chief executive or principal officer (however described) of that organisation and any member of the senior executive service who works for that organisation; and

“(b) in relation to the New Zealand Defence Force, a member of the Armed Forces”.

#### **14 Act to bind the Crown**

(1) Section 5(1) of the Building Act 1991 is amended by omitting the words “and (3)”, and substituting the words “(3), and (4)”.

(2) Section 5 of the Building Act 1991 is amended by repealing subsection (3), and substituting the following subsections:

“(3) An instrument of the Crown may be prosecuted for an offence against this Act if, and only if,—

“(a) that instrument is a Crown organisation; and

“(b) the offence is alleged to have been committed by the Crown organisation; and

“(c) the proceedings are instituted—

“(i) against the Crown organisation in its own name, and do not cite the Crown as a defendant; and

“(ii) in accordance with the Crown Organisations (Criminal Liability) Act 2002.

“(4) The Crown may not be prosecuted for an offence against this Act, except to the extent and in the manner provided in subsection (3).”

#### **15 Injunctions may be granted by District Court for certain continuing breaches**

(1) Section 81(1) of the Building Act 1991 is amended by inserting, after the expression “paragraph (a)”, the expression “or paragraph (ab)”.

(2) Section 81 of the Building Act 1991 is amended by adding, after subsection (5), the following subsection:

“(6) Despite section 17(1)(a) of the Crown Proceedings Act 1950,—

- “(a) the District Court may grant an injunction against a Crown organisation, but only in its own name; and
- “(b) for the purposes of imposing or enforcing an injunction referred to in paragraph (a), the Crown organisation, if not a body corporate, has a separate legal personality.”

## **16 Liability of principal for acts of agents**

Section 82 of the Building Act 1991 is amended by adding the following subsections:

- “(4) Subsections (1) and (2) do not apply if an offence is committed by a person acting as the agent or employee of a Crown organisation.
- “(5) If any Crown organisation is convicted of an offence against this Act, the chief executive or principal officer (however described) of that organisation, and any person concerned in the management of that organisation, is guilty of the like offence if it is proved—
  - “(a) that the act that constituted the offence took place with his or her authority, permission, or consent; and
  - “(b) that he or she knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.”

## **17 New section 82A inserted**

The Building Act 1991 is amended by inserting, after section 82, the following new section:

### **“82A Liability for acts of employees or agents of Crown organisations**

- “(1) If an offence referred to in section 6(1)(a) of the Crown Organisations (Criminal Liability) Act 2002 is committed by a person acting as the agent or employee of a Crown organisation, that Crown organisation must (without affecting the personal liability of the agent or employee) be treated for all legal purposes as having committed that offence.
- “(2) Despite subsection (1), if proceedings for an offence referred to in section 6(1)(a) of the Crown Organisations (Criminal Liability) Act 2002 are brought against a Crown organisation in reliance on subsection (1), it is a good defence if the Crown organisation proves that—

- “(a) the organisation took all reasonable steps to remedy any effects of the act or omission constituting the offence; and
- “(b) either—
  - “(i) no person involved in the management of the organisation knew or could reasonably be expected to have known that the offence was to be or was being committed; or
  - “(ii) the organisation took all reasonable steps to prevent the commission of the offence.”

## 18 Service of documents

Section 87 of the Building Act 1991 is amended by inserting, after subsection (3), the following subsection:

- “(3A) Despite subsection (1), if a notice or other document is to be served on a Crown organisation for the purposes of this Act, it may be served—
  - “(a) by delivering it personally to an employee of the organisation at its head office or principal place of business; or
  - “(b) by delivering it at the organisation’s head office or principal place of business, including by facsimile; or
  - “(c) in accordance with a method agreed between the informant and the organisation.”

### *Amendments to Costs in Criminal Cases Act 1967*

## 19 Interpretation

Section 2 of the Costs in Criminal Cases Act 1967 is amended by inserting, in its appropriate alphabetical order, the following definition:

“**Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002”.

## 20 Costs of the prosecutor

Section 4 of the Costs in Criminal Cases Act 1967 is amended by adding the following subsection:

- “(5) If subsection (1) or subsection (3) applies and the defendant or person convicted is a Crown organisation convicted of an offence against the Building Act 1991 or the Health and Safety in Employment Act 1992, any costs and fees awarded must be paid from the funds of that organisation.”



**21 Payment of defendant's costs**

Section 7 of the Costs in Criminal Cases Act 1967 is amended by adding the following subsection:

- “(3) If an order under section 5 or section 6 relating to the payment of costs is made in favour of a Crown organisation that was prosecuted for an offence against the Building Act 1991 or the Health and Safety in Employment Act 1992, those costs must be paid to that Crown organisation.”

**22 Enforcement of order as to costs made on an appeal**

Section 10 of the Costs in Criminal Cases Act 1967 is amended by adding, as subsection (2), the following subsection:

- “(2) Despite subsection (1), if, on the determination of any appeal to which a Crown organisation convicted of an offence against the Building Act 1991 or the Health and Safety in Employment Act 1992 is a party, the Crown organisation is ordered to pay costs, the order as to costs is enforceable as if it were a fine imposed on the Crown organisation by the District Court.”

*Amendments to Health and Safety in Employment Act 1992***23 Interpretation**

- (1) Section 2(1) of the Health and Safety in Employment Act 1992 is amended by inserting, in its appropriate alphabetical order, the following definition:

“**Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002”.

- (2) Section 2(1) of the Health and Safety in Employment Act 1992 is amended by repealing the definition of **employer**, and substituting the following definition:

“**employer**—

- “(a) means a person who or that employs any other person to do any work for hire or reward; and, in relation to any employee, means an employer of the employee; and
- “(b) includes, in relation to any person employed by the chief executive or other employee of a Crown organisation to do any work for the Crown organisation for hire or reward, that Crown organisation”.

**24 Application of Act to the Crown**

- (1) Section 3(1) of the Health and Safety in Employment Act 1992 is amended by omitting the expression “subsection (2)”, and substituting the expression “subsections (2) and (3)”.
- (2) Section 3 of the Health and Safety in Employment Act 1992 is amended by repealing subsection (2), and substituting the following subsections:
  - “(2) An instrument of the Crown may be prosecuted for an offence against this Act if, and only if,—
    - “(a) that instrument is a Crown organisation; and
    - “(b) the offence is alleged to have been committed by the Crown organisation; and
    - “(c) the proceedings are instituted—
      - “(i) against the Crown organisation in its own name and do not cite the Crown as a defendant; and
      - “(ii) in accordance with the Crown Organisations (Criminal Liability Act) 2002.
- “(3) The Crown may not be prosecuted for an offence against this Act, except to the extent and in the manner provided in subsection (2).”

**25 Only inspectors to institute prosecutions**

Section 54 of the Health and Safety in Employment Act 1992 is amended by adding, as subsection (2), the following subsection:

- “(2) Despite subsection (1), proceedings against the Department of Labour for an offence against this Act may be brought only with the authority of the Solicitor-General, and the informant must be represented in those proceedings by a Crown Solicitor.”

**26 Other provisions relating to offences**

Section 55 of the Health and Safety in Employment Act 1992 is amended by inserting, after subsection (3), the following subsection:

- “(3A) Subsection (3) is subject to section 3(2).”

**27 Offences by bodies corporate**

- (1) The heading to section 56 of the Health and Safety in Employment Act 1992 is amended by inserting, after the words “**bodies corporate**”, the words “**or Crown organisations**”.
- (2) Section 56 of the Health and Safety in Employment Act 1992 is amended by adding, as subsection (2), the following subsection:  
“(2) If a Crown organisation fails to comply with a provision of this Act, any of its officers, directors, agents, or employees concerned in the management of the organisation who directed, authorised, assented to, acquiesced in, or participated in the failure is a party to, and guilty of, the failure and is liable on conviction to the punishment provided for the offence, whether or not the Crown organisation has been prosecuted or convicted.”

*Amendments to Sentencing Act 2002***28 Interpretation**

- (1) Section 4(1) of the Sentencing Act 2002 is amended by inserting, after the definition of **court**, the following definition:  
“**Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002”.
- (2) Section 4 of the Sentencing Act 2002 is amended by adding the following subsection:  
“(4) For the purposes of this Act, the offender, in the case of a Crown organisation that is charged with, or convicted of, an offence against the Building Act 1991 or the Health and Safety in Employment Act 1992, is that Crown organisation and not the Crown.”

*Amendments to Summary Proceedings Act 1957***29 Interpretation**

- (1) Section 2(1) of the Summary Proceedings Act 1957 is amended by inserting, in its appropriate alphabetical order, the following definition:  
“**Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002”.

- (2) Section 2(1) of the Summary Proceedings Act 1957 is amended by adding to paragraph (c) of the definition of **defendant** the expression “; and”, and by adding the following paragraph:

“(d) a Crown organisation, if proceedings are brought against that organisation for an offence referred to in section 6 of the Crown Organisations (Criminal Liability) Act 2002”.

### **30 Mode of service of documents on defendant**

Section 24 of the Summary Proceedings Act 1957 is amended by inserting, after subsection (1), the following subsection:

- “(1A) Despite subsection (1), if a summons or other document required to be served on a defendant is to be served on a defendant who is a Crown organisation, it may be served—
- “(a) by delivering it personally to an employee of the organisation at its head office or principal place of business; or
  - “(b) by delivering it at the organisation’s head office or principal place of business, including by facsimile; or
  - “(c) in accordance with a method agreed between the informant and the organisation.”

### **31 Stay of proceedings**

Section 77A of the Summary Proceedings Act 1957 is amended by adding, as subsection (2), the following subsection:

- “(2) If an information is laid against the Crown Law Office in respect of an offence referred to in section 6 of the Crown Organisations (Criminal Liability) Act 2002, any decision to issue a direction under subsection (1) in respect of the proceedings to which the information relates must be made by the Attorney-General personally.”

### **32 Informant’s right of appeal against sentence**

Section 115A of the Summary Proceedings Act 1957 is amended by inserting, after subsection (2), the following subsection:

- “(2A) If the defendant is the Crown Law Office,—
- “(a) subsection (2) does not apply:

- “(b) no appeal may be brought under this section unless the consent of the Attorney-General has been obtained and is lodged with the notice of appeal:
- “(c) any decision to give consent under paragraph (b) must be made by the Attorney-General personally.”

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### Legislative history

10 April 2001	Introduction (Bill 120-1)
3 May 2001	First reading and referral to Law and Order Committee
2 November 2001	Reported from Law and Order Committee (Bill 120-2)
8 October 2002	Second reading, Committee of the whole House, third reading
17 October 2002	Royal assent

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This Act is administered in the Ministry of Justice.

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