



Why Aotearoa New Zealand Needs a Corporate Homicide Bill

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DOI: 10.26686/nzjhsp.v1i2.9549

Abstract

New Zealand needs a law to make corporate homicide a crime. Without such a law those primarily responsible for the protection of workers and others from death or serious harm due to work do not face full responsibility for their actions or inactions. In other words, there may be no justice for people killed or needlessly injured due to work. This is why I propose a member's Bill, the Crimes (Corporate Homicide) Amendment Bill, which would introduce a new offence of corporate homicide.

The Bill provides that a person commits the offence of corporate homicide if:

1. they have a relevant legal duty of care, and
2. engages in conduct that exposes any individual to whom that duty is owed to a risk of death or serious injury; and 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
3. their conduct results in the death of the individual.

Keywords

corporate manslaughter; Health and Safety at Work Act; Taskforce; workplace deaths

Introduction

At the moment there are serious consequences for individuals whose actions or inactions cause the death of a person, but the same consequences do not apply to legal 'persons' such as companies.

An effective law would make clear that companies and their managers could face corporate homicide charges where they owe a duty of care but are reckless in failing to prevent death or serious. Such a law would apply the simple reasoning in the Crimes Act 1961 (s171) to actions or inactions in the workplace: "...culpable homicide not amounting to murder is manslaughter".

It might be thought that that such a law would add an unnecessary burden to the already challenging task of governing or managing a business. But there is a reason for the proposed Bill that is well expressed in the Sentencing Act 2002. While addressing the basis of how judges must sentence, the Act provides a clear statement of the purpose of criminal law, including holding the offender accountable, providing for the victim's interests, denunciation and deterrence. These are also the purposes of the proposed Crimes (Corporate Homicide) Amendment Bill. Those responsible for workplace injuries and fatalities should be accountable for their reckless actions or inactions when a duty of care is owed. All such duty-holders must have a sense of responsibility for those in their workplace and their community. The interests of victims and their right to justice must be paramount.

Following a workplace or work-related death in NZ organisations and individuals associated with them can be charged under the Health and Safety at Work Act (HSWA, 2015). The penalties under the Act are not inconsiderable; in some circumstances, punishment can be a maximum fine of \$3,000,000 and/or a term of imprisonment not exceeding five years. However, for a large organisation, the cost of fines may be less than the costs of compliance – a cost of doing business.

The Crimes (Corporate Homicide) Bill would help to bridge the gap that prevents corporations and the people responsible from being prosecuted for reckless behaviour or gross negligence causing workplace deaths just as private individuals are for manslaughter.

One of the principles of effective legislation is that there needs to be a logical and clear reason for the state to extend its powers to solve a real problem. What is the problem the proposed corporate homicide bill would aim to solve?

Work-related deaths in New Zealand

New Zealand's rate of workplace deaths and injuries per capita is much higher than that of both Australia and the UK (ILO, 2024; Lilley et al., 2020). In the last 30 years work-related multiple fatalities have highlighted the lack of effective workplace regulation and legislation in New Zealand, including for example the:

- Loafers Lodge fire in 2023 (Five deaths, 20 injured) (Nocolau, 2024)
- Whakaari eruption in 2019 (22 deaths plus many injured by physical and psychosocial health effects) (Zanini & Bennett, 2024)
- collapse of the CTV building in Christchurch in 2011 (115 deaths) (DBH, 2012)
- Pike River Mine disaster in 2010 (29 deaths) (Royal Commission on the Pike River Coal Mine Tragedy, 2012)
- Mangatepopo canyoning tragedy in 2008 (Devonport, 2010)
- Cave Creek platform collapse in 1995 (killed 14 and injured 4 others) (Noble, 1995)

In response to the Pike River tragedy the Health and Safety at Work Act 2015 (HSWA) was implemented but all of these deaths could have been avoided if effective safety standards had been applied. Additionally, neither the persons responsible for operation of the Pike River Mine nor the design of the CTV building were able to be charged for the deaths due to the absence of relevant legislation (Blumenfeld, 2018; NZ Police, 2017).

The Whakaari eruption took place in 2019 after the implementation of the HSWA and demonstrates the ongoing gap in legislation relating to corporate manslaughter. Although 22 people lost their lives as a result of the Whakaari eruption, no person has been sentenced to a term of imprisonment. The highest fine handed out was \$1,045,000 to Whakaari Management Ltd with reparations to pay to families of \$4,880,000 (*WorkSafe NZ v Whakaari Management Ltd*, 2023). Whakaari Management Ltd has appealed the case to the High Court.

Most workplace deaths happen not in large-scale disasters but in ones and twos and are concentrated in a few industries (Gunby, 2011). Even when there is a prosecution, fines for corporations are low. For example, the Port of Auckland Limited was fined only \$561,000 in 2023 when it was found guilty under section 48 of the HSWA of the 2020 death of stevedore Pala'amo Kalati (Anon, 2023; MNZ, 2023). Between 2013 and 2023, 18 other port-workers died due to work-related incidents alone (Bathgate, 2023; Knell, 2023). Furthermore, families may see little effective justice for their loss (Matthews et al., 2016; Matthews et al., 2019).

Following the Pike River disaster the Independent Taskforce reported (Jager et al., 2013):

The Taskforce recommends extending the existing manslaughter offence to corporations and revising the corporate liability framework that applies to all offences (including manslaughter). This would be the most effective way to maximise the denunciatory and deterrent effect of the criminal law in influencing the behaviour of corporations. The recommended revision to existing law would need to address two issues. First, it would need to allow the attribution of criminal liability to a corporation as a result of the acts and omissions of a greater range of officers and employees within that corporation, provided they are acting within the scope of their authority. Second, it would need to provide that liability could be attributed to a corporation if two or more individuals of the required seniority within the company engaged in conduct that, if it had been the conduct of only one of them, would have made them personally liable for the offence. This would allow conduct and states of mind to be aggregated for the purposes of attributing corporate liability in a way not permitted under current New Zealand law.

Although corporate manslaughter legislation has now been enacted in jurisdictions comparable to New Zealand such as the UK, Canada and now, most Australian states in New Zealand only individuals can be charged with manslaughter.

How would New Zealand compare with other countries?

Table 1 shows how the proposed Crimes (Corporate Homicide) Amendment Bill compares with legislation in Australia and the UK and summarises their versions of corporate manslaughter legislation. Note that Australian and NZ health and safety legislation uses the term "person conducting a business or undertaking" (PCBU) not employer.

In the UK, corporate manslaughter is covered under the Corporate Manslaughter and Corporate Homicide Act 2007 which allows for fines of up to £20 million (CPS, 2018), more than 13 times New Zealand’s maximum fine of NZ\$3 million. As of 2024, all Australian jurisdictions except Tasmania, have some form of corporate manslaughter legislation in place with sentences ranging from 20 years to life, and fines range from AU\$5 million to AU\$19 million.

The proposed Crimes (Corporate Homicide) Amendment Bill in New Zealand would allow for either a term of life imprisonment for an individual to be imposed or in any other case a fine of \$10 million. Passing this Bill would help bring New Zealand’s workplace fatality rates in line with that of Australia and the UK, as those responsible could be held accountable for their actions or inactions.

Table 1. Jurisdictions with industrial manslaughter offences or proposed offences

Jurisdiction	Maximum penalty	Fault element (aggravating factor)
Australian Capital Territory	Body corporate A\$15 million fine PCBU or officer; 20 years imprisonment	“reckless or negligent about causing the death”
Commonwealth Government	Body corporate A\$18 million fine PCBU or officer; 25 years imprisonment	“reckless or negligent, as to whether the conduct would cause the event”
Northern Territory	Body corporate A\$10 million fine PCBU or officer; Life imprisonment	“reckless or negligent about the conduct”
Queensland	Body corporate A\$15 million fine PCBU or officer; 20 years imprisonment	“negligence”
Victoria	Body corporate A\$19 million fine PCBU or officer; 25 years imprisonment	“negligence”
South Australia	Body corporate A\$18 million fine PCBU or officer; 20 years imprisonment	“gross negligence or is reckless”
Western Australia	Body corporate A\$10 million fine PCBU or officer; 20 years imprisonment and/or fine up to A\$5,000,000	“knowing that the conduct is likely to cause the death of, or serious harm to, an individual, and in disregard of that likelihood”
New South Wales	Body corporate A\$20 million fine PCBU or officer; 25 years imprisonment	“gross negligence”
United Kingdom	Body corporate £20 million fine Employer or director	“gross breach of a relevant duty of care owed by the organisation to the deceased”
New Zealand	Body corporate NZ\$10 million fine PCBU or officer	“reckless”

Source: Billing & Billing (2024) and Selinger & Hamer (2024)

Other jurisdictions around the world have a similar offence of corporate homicide. Introducing such an offence in New Zealand will help encourage a better health and safety culture, ensure accountability for wrong-doing and bring justice to individuals and the families of those wrongly killed at work.

Intended effect of the Bill

Implementation of the HSWA in 2015 following the Pike River Mine disaster contributed to a reduction in the number of workplace deaths and injuries in New Zealand. The proposed Crimes (Corporate Homicide) Amendment Bill would further incentivise compliance of workplace health and safety standards and practices by corporations. Improving workplace safety would not only save lives of workers but prevent unnecessary hurt for whanau, families, and communities of those affected.

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