



4 December 2014

Alex Harris  
fyi-request-2155-401572a1@requests.fyi.org.nz

Dear Alex Harris,

**Official Information Act 1982 request: advice on the introduction of a criminal offence of corporate manslaughter**

I refer to your email of 6 November 2014 requesting, under the Official Information Act 1982 (the OIA):

*All advice on the introduction of a criminal offence of corporate manslaughter produced in the past three years.*

Appendix 1 lists the documents that have been identified as falling within the scope of your request.

Parts have been withheld under section 9(2)(f)(iv) of the OIA in order to protect the confidentiality of advice tendered by Ministers of the Crown and officials. Other parts of the documents (eg, facts about the current law and the law in other jurisdictions) have been released to you.

Where information has been withheld under the OIA I am satisfied that there are no other public interest considerations that render it desirable to make the information available.

You have the right under section 28(3) of the OIA to complain to the Ombudsman about the decision to withhold some of the information requested.

Yours sincerely,

Kelby Harmes  
Manager  
Criminal Law Team  
Ministry of Justice

## Appendix 1

Document number	Document Description	Doc Date(s)	Status
1.	Note by Ministry of Justice about corporate manslaughter offence.	13 July 2012	Parts withheld under section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
2.	Note by Ministry of Justice about corporate manslaughter.	5 November 2012	Parts withheld under section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
3.	Note to Independent Taskforce on Workplace Health and Safety from Ministry of Justice about corporate manslaughter.	8 March 2013	All withheld under section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials, and section 9(2)(g)(f) to maintain the effective conduct of public affairs through the free and frank expressions of opinions by or between or to Ministers of the Crown and officers of any department or organisation in the course of their duty.
4.	Briefing to Minister of Justice from Ministry of Justice about corporate manslaughter.	23 April 2013	Parts withheld under section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
5.	Note to Minister of Justice from Ministry of Justice about corporate manslaughter and corporate liability, with attached table comparing the two projects.	18 July 2013	All withheld under section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
6.	Note to Minister of Justice from Ministry of Justice about corporate manslaughter.	13 August 2013	Parts withheld under section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
7.	Note to Minister of Justice from Ministry of Justice about corporate liability.	19 September 2013	All withheld under section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
8.	File note by Ministry of Justice on corporate manslaughter.	27 September 2013	All withheld under section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials.

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## Corporate Manslaughter Offence - Preliminary View

### Summary

2. Submissions were made to the Pike River Commission of Inquiry supporting the adoption of a corporate manslaughter offence based on 'management failure' as exists in the UK, the ACT and Canada.
3. Currently the Crimes Act offence of manslaughter does not apply to corporations because of the limited definition of homicide in the Act.

4.

There have been no prosecutions under the ACT legislation and as far as we know only two under the UK legislation to date. The UK law has been the subject of academic criticism arising out of the first prosecution. It is thought to have made prosecutions in this area too complex and difficult.

### Background

During the Commission of Inquiry into the Pike River disaster, submissions were made supporting the adoption of a corporate manslaughter offence in New Zealand along the lines of the UK offence.

8. The arguments in support of this proposal were that such a law would improve the safety culture in New Zealand and make senior managers give health and safety concerns a higher priority.

9. The Commission of Inquiry is due to release its report in September 2012.
  
10. An independent review of the health and safety laws in New Zealand is also currently being undertaken.

### *Current Law in New Zealand*

11. For most crimes a corporation can be liable if a person regarded as the “directing mind” of the corporation committed the offence. This is called the principle of “identification”. The Crimes Act defines *person* to include among other things *any board, society, or company, and any other body of persons ... in relation to such acts and things as it or they are capable of doing*.
12. The crime of manslaughter is one of the few crimes in the Crimes Act that case law has determined does not apply to corporations. The definition of homicide in section 158 of the Crimes Act, which is the basis of both manslaughter and murder, states it is the killing of one human being by another. Case law<sup>1</sup> has held that “another” means another human being - thus ruling out corporations. There is no indication this was the intention of the legislation when it was drafted – the question of corporate liability may not have been considered when the definition was drafted.
13. There are offences in the Health and Safety in Employment Act that do apply to corporations. The most serious are offences under sections 49 and 50.
14. Section 49 provides that where a person (including a corporation) takes an action, or fails to take an action, knowing that the action or omission is reasonably likely to cause serious harm to any person and that it is contrary to a provision of the Act, or in the case of an omission is required by a provision of the Act, the person commits an offence. The penalty is imprisonment for a term of not more than 2 years or a fine of not more than \$500,000.
15. Section 50 provides that where a person fails to comply with the requirements of certain parts of the Act they are liable to a fine not exceeding \$250,000. Section 53 provides that for an offence against section 50 it is not necessary to prove intention.

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<sup>1</sup> *R v Murray Wright Ltd* [1970] NZLR 476 (CA)

16. These offences do not require there to be harm caused before they apply. It is sufficient that harm might be the outcome. In that sense they are pro-active rather than reactive.

### *Corporate manslaughter offences in other similar jurisdictions*

#### *UK*

18. In the UK it was possible until recently for a corporation to be found guilty of gross negligence manslaughter based on the principle of identification, as mentioned above. Under this approach organisations could only be convicted of manslaughter if a "directing mind" at the top of the company (such as a director) is also personally liable.

19. After the tragedy of the sinking of the ferry the *Herald of Free Enterprise* in 1987 with great loss of life there was considerable debate in the UK about the offence of corporate manslaughter. In the *Herald of Free Enterprise* case, although there was clear evidence of negligent practices, it was not possible to sheet home that negligence to a particular employee who could be said to be the "mind of the company".

20. A Law Commission report recommended the development of a new corporate manslaughter offence to apply where there was a culture of systemic gross negligence but no one individual could be identified.
21. In 2007 the Corporate Manslaughter and Corporate Homicide Act was passed. This Act abolished the common law offence of corporate manslaughter and replaced it with an offence based on 'management failure'. Under this Act an organisation is guilty of manslaughter if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a relevant duty of care to the deceased. A substantial part of the breach must have been in the way activities were managed by senior management. The 'management failure' approach focuses on the arrangements, systems and practices for carrying out the corporation's work.
22. The new offence was intended to complement, not replace, other forms of accountability such as prosecutions under health and safety legislation, and is specifically linked to existing health and safety requirements.
23. The Court can impose a fine with no upper limit, make publicity orders which require an organisation to publicise the fact of its conviction and certain details of the offence, and make remedial orders which will require a company or organisation to take steps to remedy any management failure that led to a death.

#### *Australia*

24. In Australia only the ACT has passed an industrial manslaughter offence along the lines of the UK offence. Under section 49C of the Crimes Act 1900 (ACT) an employer is liable if:
- a worker dies in the course of employment;
  - the employer's conduct causes the death; and
  - the employer is reckless or negligent about causing harm or death to the worker by the conduct.
25. Alleged negligence of a company may be evidenced by the fact that the prohibited conduct was substantially attributable to inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers or failure to provide adequate systems for conveying relevant information to relevant person in the body corporate.

#### *Canada*

26. Canada has taken a more comprehensive approach to corporate criminal liability. In 2003 it amended the Criminal Code to set out what elements are required to find an

organisation guilty of an offence. It differentiates between crimes that require fault other than negligence, and those that require negligence.

27. In respect of offences requiring negligence section 22.1 provides that an organisation is a party to an offence if:

- a. Acting within the scope of their authority:
  - i. One of its representatives is a party to the offence, or
  - ii. Two or more of its representatives engage in conduct, whether by act or omission, such that, if it had been the conduct of only one representative, that representative would have been a party to the offence; and
- b. The senior officer who is responsible for the aspect of the organisation's activities that is relevant to the offence departs – or the senior officers, collectively, depart – markedly from the standard of care that, in the circumstances, could reasonably be expected to prevent a representative of the organization from being a party to the offence.

28. Applying this general approach to manslaughter would mean that a corporation would be liable either where an individual could be identified as causing the harm and they were acting within the scope of their authority *or* when the harm resulted from management failure.

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Parts withheld under s 9(2)(f)(iv)  
to protect the confidentiality of advice  
tendered by Ministers of the Crown  
and officials

### Corporate Manslaughter

- Some of the families of those who died in the Pike River mine have called for an offence of corporate manslaughter to be introduced here.
- In addition, submissions were made to the Pike River Commission of Inquiry supporting the adoption of a corporate manslaughter offence based on 'management failure' as exists in the UK, the ACT and Canada.
- Currently in New Zealand, the Crimes Act offence of manslaughter does not apply to corporations because of the limited definition of homicide in the Act (requiring the killing of one human being by another).
- In the UK offence, a corporation is guilty of manslaughter if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a relevant duty of care to the deceased.
- The offence was intended to complement, rather than replace, other forms of accountability such as prosecutions under health and safety legislation.
- The penalties for the offence include a fine with no upper limit, publicity orders which require an organisation to publicise the fact of its conviction and details of the offence, and remedial orders to require a company to take steps to remedy the management failure that led to the death.
- It is too early to determine whether the management failure offences introduced overseas are achieving the outcomes for which they were introduced. In the UK, there have only been three prosecutions, the first of which led to criticism that the law had made prosecutions too complex and difficult.
- The Independent Taskforce on Workplace Health and Safety is currently reviewing New Zealand's workplace health and safety system. It released its consultation document in September 2012, and has been undertaking consultation including public meetings, submissions and focus groups. Submissions close on 16 November 2012. The Taskforce are due to report to the Minister of Labour by the end of April 2012.



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Minister of Justice, Hon Judith Collins

**Corporate Manslaughter**

Date	23 April 2013
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23 April 2013

Minister of Justice, Hon Judith Collins

## Corporate Manslaughter

### Background

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2. The Royal Commission on the Pike River Coal Mine Tragedy stated in its Final Report, although it did not make a formal recommendation to this effect, that the New Zealand penalty regime which applies to health and safety offences should be reviewed and consideration given to increased penalties for companies and the introduction of an offence of corporate manslaughter.

### Discussion

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5. At present, corporations cannot be prosecuted for manslaughter.<sup>2</sup> However, they can be prosecuted for other offences against the person such as wounding or injuring with

<sup>1</sup> There have also been other recent calls for the introduction of such an offence by the Pike River families, by Building and Construction Minister Maurice Williamson, Law Professor Bill Hodge, and through a Member's Bill in the name of Andrew Little MP.

<sup>2</sup> The crime of manslaughter is one of the few crimes in the Crimes Act 1961 that a corporation cannot commit. This is because section 158 of the Crimes Act 1961 defines homicide as "the killing of one human being by another". The Court of Appeal has interpreted "another" to mean "another human being", excluding

Intent or with reckless disregard.

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Parts withheld under s9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials  
**Note to Minister of Justice, 13 August 2013**  
**Corporate Manslaughter**

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## Summary

1. At present, corporations cannot be prosecuted for manslaughter.<sup>1</sup> However, they can be prosecuted for other offences such as wounding or injuring with intent or with reckless disregard.

6. Few comparable jurisdictions have a specific corporate manslaughter offence

Changes in the UK and Canada are relatively recent, so it is difficult to assess their effectiveness, both in terms of deterrence and legal outcomes. In both jurisdictions, there have been very few prosecutions.

## Background

<sup>1</sup> The crime of manslaughter is one of the few crimes in the Crimes Act 1961 that a corporation cannot commit. This is because section 158 of the Crimes Act 1961 defines homicide as "the killing of one human being by another". The Court of Appeal has interpreted "another" to mean "another human being", excluding the possibility that a corporation could commit homicide as a primary offender: *R v Murray Wright Ltd* [1970] NZLR 476 (CA).

**Other jurisdictions**

Prior to 2007, corporations in the United Kingdom could be prosecuted for manslaughter under the "identification doctrine", meaning that it was necessary to prove that an individual had committed manslaughter and that this person could be "identified" with the corporation (acting on the company's behalf and was its "directing mind and will").

The UK passed the Corporate Manslaughter and Corporate Homicide Act in 2007. This Act abolished the common law offence of corporate manslaughter and replaced it with an offence-based on 'management failure'. It is intended to apply where there is a culture of systemic/gross negligence, but no one individual to whom responsibility can be attributed is able to be identified.

The Canadian Criminal Code takes a broader approach, and makes it explicit that liability can be attributed to the corporation for the acts or omissions of two or more senior officers or representatives.

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The Canadian Criminal Code, as amended in 2003, revised its corporate liability rules and provides one useful model for reform of corporate liability rules in NZ that might be considered (Canada does not have a specific corporate manslaughter offence).