



House of Representatives

Supplementary Order Paper

Wednesday, 4 April 2001

Crimes (Bribery of Foreign Public Officials) Amendment Bill

Proposed amendments

Hon Paul Swain, in Committee, to move the following amendments:

Clause 13

To omit subsections (3) and (4) of *new section 105C* (lines 1 to 8 on page 5), and substitute the following subsection:

“(3) This section is subject to **section 105E.**”

To insert, after *new section 105C* (after line 8 on page 5), the following sections:

“105D Bribery outside New Zealand of foreign public official

“(1) Every one commits an offence who, being a person described in **subsection (2)**, does, outside New Zealand, any act that would, if done in New Zealand, constitute an offence against **section 105C.**

“(2) **Subsection (1)** applies to a person who is—

“(a) a New Zealand citizen; or

“(b) ordinarily resident in New Zealand; or

“(c) a body corporate incorporated in New Zealand; or

“(d) a corporation sole incorporated in New Zealand.

“(3) Every one who commits an offence against this section is liable to the same penalty to which the person would have been liable if the person had been convicted of an offence against **section 105C.**

“(4) This section is subject to **section 105E.**

“105E Exception for acts lawful in country of foreign public official

“(1) **Sections 105C** and **105D** do not apply if the act that is alleged to constitute an offence under either of those sections—

“(a) was done outside New Zealand; and

“(b) was not, at the time of its commission, an offence under the laws of the foreign country in which the principal office of the person, organisation, or other body for whom the foreign public official is employed or otherwise provides services, is situated.

“(2) If a person is charged with an offence under **section 105C** or **section 105D**, it is to be presumed, unless the person charged puts the matter at issue, that the act was an offence under the laws of the foreign country referred to in **subsection (1)(b)**.”

Clause 25

To omit the words “crime described in **section 105C** of the principal Act is deemed to be an offence” (lines 23 and 24 on page 6), and substitute the words “crimes described in **sections 105C and 105D** are deemed to be offences”.

Clause 26

To insert in line 30 on page 7, after the expression “**section 105C**”, the expression “or **section 105D**”.

Explanatory note

The main purpose of the amendments in this Supplementary Order Paper is to confer extra-territorial jurisdiction in relation to the offence created by *new section 105C*. *New section 105D*, inserted by this Supplementary Order Paper, provides that every specified person commits an offence who does outside New Zealand any act that would, if done in New Zealand, constitute an offence against *new section 105C*. In effect, *new section 105D* confers extra-territorial jurisdiction if the person alleged to have committed the offence has some link to New Zealand as a consequence of citizenship or residence or, in the case of a body corporate, incorporation in New Zealand.

However, under *new section 105E*, no offence is committed if the act that is alleged to constitute the offence—

- was done outside New Zealand; and
- was not, at the time of its commission, an offence under the laws of the foreign country in which the principal office of the person, organisation, or other body for whom the foreign public official is employed or otherwise provides services, is situated.

New section 105E replaces 2 subsections of *new section 105C* (subsections (3) and (4)), which provide that no offence is committed if the act is lawful in the place of commission. The changes made by *new section 105E* are intended to ensure that the treatment under the Bill of payments that are lawful under the laws of the country of the foreign public official who is bribed is more consistent with the text of the commentary to the Bribery Convention than is currently provided in the Bill. However, in line with the Australian approach, the defence would not apply to acts committed in New Zealand.