New Zealand rejects an offence of corporate manslaughter for workplace deaths

By Grant Nicholson and Olivia Moller

The transport and industrial relations select committee’s report on the Health and Safety Reform Bill is the culmination of renewed debate about whether New Zealand should introduce an offence of corporate manslaughter.

The issue of corporate manslaughter first hit the headlines in New Zealand in the wake of the Pike River Mine disaster in 2010. The Council of Trade Unions recommended the introduction of corporate manslaughter in its submissions to the Pike River Royal Commission, and the government’s Independent Taskforce on Workplace Health and Safety subsequently picked it up, recommending the existing criminal offence of manslaughter be extended so that companies could be defendants.

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At the time, Prime Minister John Key said corporate manslaughter was “unlikely”, and no significant steps were taken to introduce it.

More recently, the transport and industrial relations select committee’s consideration of the Health and Safety Reform Bill has seen renewed political and public interest in the idea of corporate manslaughter. Justice Minister Amy Adams asked the Workplace Relations and Safety Minister, Michael Woodhouse, to look at the issue as she thought any new offence should be part of the proposed Health and Safety at Work Act (HSW Act).

Ultimately, when the select committee reported back to Parliament on 24 July this year, it decided not to create a corporate manslaughter offence. The select committee said a new offence was not needed and that the increased penalties available under the Health and Safety at Work Act would be sufficient to send a strong message to businesses.

“This begs the question: is it the end of corporate manslaughter in New Zealand? The answer is probably not.

A ROLE MODEL FROM THE MOTHERLAND

The United Kingdom’s corporate manslaughter law is often suggested as a model New Zealand should follow. There, corporate manslaughter was introduced as a response to a number of horrific accidents, including the Herald of Free Enterprise accident when a passenger ferry sank and over 200 lives were lost.

Manslaughter by gross negligence was already a crime, but it was rarely used as a senior person in the defendant organisation needed to have been responsible for the breach. It took several high-profile disasters, including the Herald of Free Enterprise, for things to change.

Critics say New Zealand is foolishly waiting for more people to die before we act too.

The UK’s Corporate Manslaughter and Corporate Homicide Act 2007 (CMCH Act) means a company commits an offence if:

- The way in which its activities are managed or organised causes a person’s death; and
- This is a gross breach of a relevant duty of care owed by the organisation to the deceased; and
- The way in which activities are managed or organised by senior management is a substantial element of the breach.

A law like this would catch companies like Pike River Coal and many (but not all) others responsible for deaths in New Zealand workplaces. As construction is a major cause of workplace deaths, it is likely construction companies would be caught by such a law, at least some of the time.

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HAS THE UK APPROACH BEEN SUCCESSFUL?

The initial uptake of the CMCH Act was slow in the UK, with only four convictions in the first six years. Critics were disappointed, as they had hoped the CMCH Act would see more companies held to account for workplace and other preventable deaths.

One commentator pointed out that in the time taken to achieve three convictions under the CMCH Act there had been at least 50 convictions of companies for health and safety offences arising out of fatal accidents.

Momentum is increasing though, and convictions have more than doubled in the last year. The UK Sentencing Council has said that the CMCH Act is intended for the worst instances of management failures causing death, so the limited number of prosecutions shouldn’t be surprising. New Zealand has no equivalent, so here it would be left to WorkSafe New Zealand or the New Zealand Police to decide when to prosecute if corporate manslaughter is introduced.

WHERE DOES THAT LEAVE NEW ZEALAND?

It is safe to say that, at least for now, New Zealand will not introduce a corporate manslaughter offence. The HSW Act will significantly enhance protections for health and safety in the workplace, and substantially increase the penalties construction businesses face for failing to maintain appropriate standards.

The new maximum fine of $3 million will surely bite, especially as there will also be the potential for directors and senior management to serve a term of imprisonment if they fail to comply with their personal obligations. Little will be gained by introducing a corporate manslaughter offence in New Zealand until we see how the courts apply these new penalties.

Don’t think the law won’t change in the future though. The HSW Act is not the only way to give New Zealand a corporate manslaughter offence, and Labour’s Damien O’Connor is promoting a private member’s bill introducing corporate manslaughter as an amendment to the Crimes Act 1961. As with all private members’ bills, whether this ultimately comes before Parliament will be the luck of the draw – so watch this space.