

# **Organised Crime (Penalties and Sentencing) Bill**

Government Bill 2008 No 153-2

As reported from the Justice and Electoral  
Committee

## **Commentary**

### **Recommendation**

The Justice and Electoral Committee has examined the Organised Crime (Penalties and Sentencing) Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The purpose of the bill is to increase the maximum penalty for the offence under section 98A of the Crimes Act 1961 (relating to participation in an organised criminal group) to a maximum of ten years' imprisonment. It also amends section 9 of the Sentencing Act 2002 (relating to aggravating and mitigating factors to be taken into account by a court) to provide that it is an aggravating factor when an offence is committed partly or wholly because of the offender's participation in an organised criminal group.

### **Aggravating and mitigating factors**

We recommend amending clause 6 of the bill to ensure that the bill, if passed, is no more restrictive in scope than the current common law in relation to aggravating factors that may be taken into account at sentencing.

### **Comments on the bill**

While in support of the bill, the New Zealand Police Association expressed reservations about the definitions regarding and requirements for obtaining an interception warrant under Part 11A of the Crimes Act 1961 (obtaining evidence by interception devices), which differ from the formulations in section 98A relating to participation in an organised criminal group.

We were advised that these concerns would be addressed in a Search and Surveillance Powers Bill, which is intended to be introduced into the House this year. The bill will give effect to the Law Commission's report *Search and Surveillance Powers*, and will allow interception warrants to be issued on the basis of suspicion (on reasonable grounds) that a person is committing any offence for which a search warrant may be obtained.

Further, as the bill is intended to result in the repeal of the current interception regime in the Crimes Act, the definitional inconsistency identified by the Police Association will no longer be an issue.

We look forward to the introduction of this bill, and to the opportunity to correct the current inconsistencies in the interception warrant regime.

## **Appendix**

### **Committee process**

The Organised Crime (Penalties and Sentencing) Bill was referred to the committee on 1 July 2008. The closing date for submissions was 21 July 2008. We received and considered three submissions from interested groups and individuals. We heard one submission.

We received advice from the Ministry of Justice.

### **Committee membership**

Lynne Pillay (Chairperson)

Christopher Finlayson (Deputy Chairperson)

Chris Auchinvole

Mark Blumsky (from 30 July 2008)

Charles Chauvel

Hone Harawira (non-voting member)

Mētīria Tūrei

Nicky Wagner (until 30 July 2008)

Louisa Wall

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Annette King*

# **Organised Crime (Penalties and Sentencing) Bill**

Government Bill

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

- 1 Title**  
This Act is the Organised Crime (Penalties and Sentencing) Act **2008**.
  
- 2 Commencement**  
This Act comes into force on 31 October 2008. 5

**Part 1****Amendment to Crimes Act 1961****3 Crimes Act 1961 amended**

This **Part** amends the Crimes Act 1961.

**4 Participation in organised criminal group** 5

(1) Section 98A(1) is amended by omitting “5” and substituting “10”.

(2) Section 98A(1)(b) is amended by inserting “is” before “reckless”.

**Part 2** 10**Amendment to Sentencing Act 2002****5 Sentencing Act 2002 amended**

This **Part** amends the Sentencing Act 2002.

**6 Aggravating and mitigating factors**

Section 9(1) is amended by inserting the following paragraph after paragraph (ha):

~~“(hb) that the offender committed the offence partly or wholly because of his or her participation in an organised criminal group (within the meaning of section 98A(2) of the Crimes Act 1961):~~ 20

“(hb) that the offender committed the offence partly or wholly because of his or her—

“(i) participation in an organised criminal group (within the meaning of section 98A(2) of the Crimes Act 1961); or 25

“(ii) involvement in any other form of organised criminal association:”.

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**Legislative history**

19 June 2008  
1 July 2008

Introduction (Bill 153–1)  
First Reading and referral to Justice and Electoral  
Committee

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