

Examined and certified:

Clerk of the House of Representatives

*In the name and on behalf of Her Majesty Queen Elizabeth
the Second I hereby assent to this Act this 2nd day
of May 2001*

Governor-General.

Crimes (Bribery of Foreign Public Officials) Amendment Act 2001

Public Act 2001 No 28

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act may be cited as the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001.

(2) In this Act, the Crimes Act 1961 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to implement the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Bribery of public officials

4 Bribery of judicial officer, etc

Section 101(2) of the principal Act is amended by omitting the expression “5 years”, and substituting the expression “7 years”.

5 Corruption and bribery of member of Parliament

Section 103(2) of the principal Act is amended by omitting the expression “3 years”, and substituting the expression “7 years”.

6 Corruption and bribery of law enforcement officer

Section 104(2) of the principal Act is amended by omitting the expression “3 years”, and substituting the expression “7 years”.

7 Corruption and bribery of official

Section 105(2) of the principal Act is amended by omitting the expression “3 years”, and substituting the expression “7 years”.

8 New sections 105C to 105E inserted

The principal Act is amended by inserting, after section 105B, the following sections:

“105C Bribery of foreign public official

“(1) In this section and in sections 105D and 105E,—

“**benefit** means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect

“foreign country includes—

- “(a) a territory for whose international relations the government of a foreign country is responsible; and
- “(b) an organised foreign area or entity including an autonomous territory or a separate customs territory

“foreign government includes all levels and subdivisions of government, such as local, regional, and national government

“foreign public agency means any person or body, wherever situated, that carries out a public function under the laws of a foreign country

“foreign public enterprise means—

- “(a) a company, wherever incorporated, that—
 - “(i) a foreign government is able to control or dominate (whether by reason of its ownership of shares in the company, its voting powers in the company, or its ability to appoint 1 or more directors (however described), or by reason that the directors (however described) are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and
 - “(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (b)(i) apply; or
- “(b) a person or body (other than a company), wherever situated, that—
 - “(i) a foreign government is able to control or dominate (whether by reason of its ability to appoint the person or 1 or more members of the body, or by reason that the person or members of the body are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and
 - “(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (a)(i) apply

“foreign public official includes any of the following:

- “(a) a member or officer of the executive, judiciary, or legislature of a foreign country:

“(b) a person who is employed by a foreign government, foreign public agency, foreign public enterprise, or public international organisation:

“(c) a person, while acting in the service of or purporting to act in the service of a foreign government, foreign public agency, foreign public enterprise, or public international organisation

“**public international organisation** means any of the following organisations, wherever situated:

“(a) an organisation of which 2 or more countries or 2 or more governments are members, or represented on the organisation:

“(b) an organisation constituted by an organisation to which paragraph (a) applies or by persons representing 2 or more such organisations:

“(c) an organisation constituted by persons representing 2 or more countries or 2 or more governments:

“(d) an organisation that is part of an organisation referred to in any of paragraphs (a) to (c)

“**routine government action**, in relation to the performance of any action by a foreign public official, does not include—

“(a) any decision about—

“(i) whether to award new business; or

“(ii) whether to continue existing business with any particular person or body; or

“(iii) the terms of new business or existing business; or

“(b) any action that is outside the scope of the ordinary duties of that official.

“(2) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give a bribe to a person with intent to influence a foreign public official in respect of any act or omission by that official in his or her official capacity (whether or not the act or omission is within the scope of the official’s authority) in order to—

“(a) obtain or retain business; or

“(b) obtain any improper advantage in the conduct of business.

“(3) This section does not apply if—

“(a) the act that is alleged to constitute the offence was committed for the sole or primary purpose of ensuring

or expediting the performance by a foreign public official of a routine government action; and

“(b) the value of the benefit is small.

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

“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).”

9 Restrictions on prosecution

Section 106(1) of the principal Act is amended by omitting the expression “and 105B of this Act”, and substituting the expression “105B, 105C, and 105D”.

*Extradition of offenders***10 Crimes against sections 105C and 105D deemed to be included in extradition treaties**

- (1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, the crimes described in sections 105C and 105D are deemed to be offences described in any extradition treaty concluded before the commencement of this section and for the time being in force between New Zealand and any foreign country that is a party to the Bribery Convention.
- (2) If subsection (1) deems a crime to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 1999 in respect of an act that amounts to that crime is liable to be surrendered in accordance with the provisions of that Act, whether the act occurred before or after the date on which the crime was deemed to be an offence described in the extradition treaty.
- (3) This section does not apply in respect of an act that, had it occurred within the jurisdiction of New Zealand, would not at that time have constituted an offence under New Zealand law.
- (4) A certificate given under the hand of the Minister of Foreign Affairs and Trade that any foreign country is a party to the Bribery Convention is, in the absence of proof to the contrary, sufficient evidence of that fact.
- (5) For the purposes of this section,—

Bribery Convention means the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, done at Paris on 17 December 1997

foreign country includes any territory for whose international relations the government of a foreign country is responsible and to which the extradition treaty and the Bribery Convention extends.

*Amendments to Mutual Assistance in Criminal Matters
Act 1992***11 Amendments to Mutual Assistance in Criminal Matters Act 1992**

- (1) Section 24A of the Mutual Assistance in Criminal Matters Act 1992 is amended by adding the following subsection:

- “(7) If a convention country requests assistance under this Part in accordance with a convention specified in Part 7 of Schedule 1, the request must relate to criminal matters arising from the commission or suspected commission of an offence that, if committed within the jurisdiction of New Zealand, would correspond to an offence against section 105C or section 105D of the Crimes Act 1961.”
- (2) Section 24B(2)(b) of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, after the expression “24A(6)”, the expression “or section 24A(7)”.
- (3) Section 24B(3) of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, after the expression “section 24A(6)”, the expression “or section 24A(7)”.
- (4) Schedule 1 of the Mutual Assistance in Criminal Matters Act 1992 is amended by adding the Part 7 set out in Schedule 1.

Amendment to Extradition Act 1999

12 Amendment to Extradition Act 1999

The Extradition Act 1999 is amended in the manner indicated in Schedule 2.

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Schedule 1
New Part added to Schedule 1 of Mutual Assistance
in Criminal Matters Act 1992

Part 7

The Convention on Combating Bribery of Foreign Public Officials
in International Business Transactions, done at Paris on 17 Decem-
ber 1997.

Schedule 2

Enactment amended

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Extradition Act 1999 (1999 No 55)

Insert, after section 101, the following section:

“101A Treaties deemed to incorporate crimes

- “(1) An extradition treaty between New Zealand and an extradition country must be construed to give effect to every specified provision (being a provision relating to the inclusion of offences within certain treaties by operation of law).
- “(2) For the purposes of subsection (1), each of the following provisions is a specified provision:
- “(a) sections 7 and 7A of the Aviation Crimes Act 1972:
 - “(b) section 35 of the Misuse of Drugs Act 1975:
 - “(c) sections 10 and 10A of the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980:
 - “(d) section 8 of the Crimes of Torture Act 1989:
 - “(e) section 14 of the Maritime Crimes Act 1999:
 - “(f) section 10 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001.”.

Legislative history

29 November 2000	Reported from Law and Order Committee (formerly part of Crimes Amendment Bill (No 6)) (Bill 322–2A)
3 April 2001	Consideration of report
4 April 2001	Committee of the whole House (Bill 322–3A)
1 May 2001	Third reading
