

Submission

by

Business|NZ

to the

Justice and Electoral Select Committee

on the

Criminal Records (Clean Slate) Bill

September 2002

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CRIMINAL RECORDS (CLEAN SLATE) BILL

SUBMISSION BY BUSINESS NEW ZEALAND

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1. INTRODUCTION

1.1 This submission is made on behalf of Business New Zealand, incorporating regional employers' and manufacturers' organisations. The full regional members comprise the Employers and Manufacturers Association (Northern), Employers and Manufacturers Association (Central), Canterbury Manufacturers' Association, Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association. Business New Zealand represents business and employer interests in all matters affecting the business and employment sectors.

1.2 Business New Zealand is the leading national organisation representing the interests of New Zealand's business and employing sectors comprising some 76,000 individual enterprises. Business New Zealand champions policies that would transform and accelerate the growth of high value added goods and services to significantly improve the prosperity of all New Zealanders. One of Business New Zealand's key goals is to see the implementation of policies that would see New Zealand retain a first world national income and to regain a place in the top ten of the OECD in per capita GDP terms.

2. RECOMMENDATIONS

1. That the Bill be amended to exclude from its coverage convictions for:
 - theft as a servant, fraud, and embezzlement in respect to financial occupations;
 - drug and alcohol offences where transport operations are involved, or where the work is with highly capital intensive plant or equipment or with equipment that could potentially cause serious harm, or is in the pharmaceutical, hospitality or tourism industries;
 - dishonesty offences where the person concerned would have unsupervised access to other persons' properties;
 - arson or committing a public nuisance by lighting fires, where a person seeks to be appointed to a fire fighting or fire protection position.
2. That employers be permitted to ask about any previous conviction if that conviction is relevant to the specific job.
3. That convictions imposed against bodies corporate be expunged after ten years if they did not result in imprisonment.
4. That the Bill proceed if amended in line with the above recommendations.

3. DISCUSSION

- 3.1 In 1988 the New Zealand Employers' Federation (as it then was) opposed the introduction of Criminal Records legislation essentially on the basis that it is for the wider community to choose whether or when to pardon past criminal behaviour and that any attempt to do this by statutory means is inappropriate. In the event of that Act becoming law, the Federation recommended that it first be amended to permit employers to question potential employees about past criminal convictions of relevance to the particular job or industry.

- 3.2 However, over the intervening period the Federation has revised its view about of the desirability of expunging minor convictions, first in relation to the 2001 Clean Slate Bill and now, as a constituent member of Business New Zealand, in relation to the Bill under discussion.
- 3.3 Business New Zealand notes with approval that the proposed clean slate scheme will apply only to someone who has completed a ten-year rehabilitation period, has not received a custodial sentence, has paid any fine or reparation imposed, has not been convicted of a specified sexual offence and who, if disqualified from driving, has since met any re-licensing requirements.
- 3.4 Business New Zealand has real concerns that minor offences, youthful indiscretions in particular, can have life-long adverse consequences both on employment prospects and on matters such as the ability to travel freely. The situation is the more complex latterly since, as the Bill's explanatory note points out, the introduction of the Police Adult Diversion Scheme has introduced a degree of inconsistency. Now offenders who would once have received a conviction can pass through the scheme without being convicted and so without acquiring a criminal record.
- 3.5 There are, nonetheless, some remaining concerns. The Bill, like last year's private member's Bill, contains certain exemptions (although a conviction for arson where a fire fighting position is sought is no longer among them) and these are supported by Business New Zealand. But on a like basis it is Business New Zealand's view that it also makes sense to exclude from coverage convictions for the crimes of theft as a servant, fraud and embezzlement in respect of financial occupations, dishonesty offences where there is unsupervised access to other persons' properties, and drug and alcohol offences where transport operations are involved or where the work is with highly capital intensive plant or equipment or equipment that could potentially cause serious harm or is in the pharmaceutical, hospitality or tourism industries (where lives may be put at risk and New Zealand's

reputation as a tourist destination damaged). A reference to arson convictions and fire fighters should be inserted into the Bill.

3.6 The exemptions set out in paragraph 3.5 are unlikely to constitute a complete list. Business New Zealand therefore proposes that *any* employer be permitted to ask about a past conviction or convictions if considered relevant to a particular job. The burden would then – in the event of any subsequent complaint – be on the employer to establish that there was a causal link between the offending and the employment in question.

3.7 Business New Zealand also notes that that the Bill does not extend to cover bodies corporate. However, a corporation which, for example, has been convicted and fined under the Health and Safety in Employment Act 1992 may subsequently put highly effective safety measures in place and thereafter have a blameless record. Such an organisation should likewise be entitled to have any ten-year old conviction expunged, even although the level of fines and penalties contained in the Health and Safety in Employment Amendment Bill would mean that an offence of this kind would be unlikely to fall within the minor offending category. The strict liability nature of such offending, with the offence itself invariably unintentional is – if the circumstances giving rise to the offence have been put right in the intervening period - a very good reason why, after ten years, a previous conviction should no longer stand.

3.8 If the Bill is amended in line with the recommendations set out in section 4 and as discussed above, Business New Zealand will be happy to support it.

4. RECOMMENDATIONS

1. That the Bill be amended to exclude from its coverage convictions for:

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- dishonesty offences where there is unsupervised access to other persons' properties.
- arson or committing a public nuisance by lighting fires, where a person seeks to be appointed to a fire fighting or fire protection position.

2. That employers be permitted to ask about any previous conviction if that conviction is relevant to the particular job.
- 3 That convictions imposed against bodies corporate be expunged after ten years if these did not result in imprisonment.
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5 September 2002