

Short-Form Supplementary Departmental Disclosure Statement

Commerce (Criminalisation of Cartels) Amendment Bill
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A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

Provides a limited supplement to the original disclosure statement for the Commerce (Criminalisation of Cartels) Amendment Bill, dated 14 February, which can be found at this link <http://disclosure.legislation.govt.nz/bill/government/2018/22/>.

This supplementary disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

12 February 2019

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p><i>Changing the proposed defence</i></p> <p>The Bill as amended will provide for a defence if the defendant believed one of the Commerce Act exceptions applied, but a mistake of fact meant that it didn't. Originally this was intended to apply to some of the exceptions, but the new defence will apply to all exceptions.</p> <p><i>Jurisdiction of High Court or District Court/Category of the Offence</i></p> <p>Clause 10 of the Bill as introduced amends the Criminal Procedure Act 2011 to provide that the new offence will be a category 4 offence, to be heard by the High Court.</p> <p>Following consideration, that category 3 is more appropriate. The SOP amends this. As a consequence, a proposed change to the Commerce Act reference High Court jurisdiction will be removed from the Bill.</p> <p>This affects the jurisdiction of both the High Court and District Court. By default these offences will be District Court matters, but they will also be protocol offences. That is, they will be automatically considered for transfer to the High Court.</p>	

1.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice was consulted on substantive proposal and the draft SOP. No comments were received.	

Privacy issues

2. Do the proposed amendments create, amend or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO

Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

5. Do the proposed amendments affect rights, freedoms or impose obligations, retrospectively?	NO

Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO (see below)
<p>The Bill as amended will provide for a defence if the defendant believed one of the Commerce Act exceptions applied, but a mistake of fact meant that it didn't.</p> <p>The Bill contained a disclosure provision for the defence. The defendant would need to provide within 20 working days after a not guilty plea (or at any time with leave of the court) sufficient details about the application of the relevant section to fully and fairly inform the prosecution of the manner in which the exception or defence is claimed to apply.</p> <p>In its submission to the select committee, the New Zealand Law Society objected to the use of the words "full and fairly". They considered it could be misunderstood as reversing the burden of proof on the defendant.</p> <p>This is unsatisfactory. The SOP will amend the Bill to ensure the burden is not reversed. We have based the new drafting on the alibi defence notification regime in the Criminal Procedure Act.</p>	

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations or interests?	NO

Powers to make delegated legislation

9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

10. Do the proposed amendments create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO