



Crimes (Increased Penalty for Providing Explosive to Commit Crime) Amendment Bill

207—1

Report of the Justice Committee

March 2018

Contents

Recommendation.....	2
About the bill as introduced.....	2
Our consideration of the bill.....	2
Appendix.....	4

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Recommendation

The Justice Committee has examined the Crimes (Increased Penalty for Providing Explosive to Commit Crime) Amendment Bill. We have been unable to agree on whether the bill should proceed. We therefore report the bill to the House without amendment.

About the bill as introduced

The bill is a member's bill in the name of Alastair Scott MP. If enacted, it would amend section 272 of the Crimes Act 1961 to increase the penalty from a maximum of 2 years imprisonment to a maximum of 5 years.

Section 272 states that "Every one is liable to imprisonment for a term not exceeding 2 years who knowingly has in his or her possession or makes any explosive substance, or any dangerous engine, instrument, or thing, with intent to use or enable another person to use the substance, dangerous engine, instrument, or thing, to commit an offence".

Our consideration of the bill

Why the bill should proceed

The National Party members of the committee support the bill proceeding. We consider that increasing the penalty level in section 272 is appropriate because it would align it with similar offences. For example, section 202A of the Crimes Act¹ and section 51 of the Arms Act² 1983 both have a maximum penalty of 3 years imprisonment, even though they have a lower intent threshold than section 272.

Further, a legal burden of proof falls on the defendant in both sections 202A and 51. This generally indicates that a lower penalty should apply than where the prosecution has to establish each element of the offence. In comparison, section 272 requires the prosecution to prove the elements of the offence. This is a factor that indicates that it should have a higher penalty.

We also note that the Law Commission has recommended increasing the penalty level of section 272 in its report, Maximum Penalties for Criminal Offences (SP21).³ In the report, the Law Commission compared section 272 with section 55 of the Arms Act, and considered that the two sections are "almost identical".⁴ However, section 55 carries a maximum penalty

¹ Section 202A of the Crimes Act 1961 can be found at <http://www.legislation.govt.nz/act/public/1961/0043/137.0/DLM329710.html>

² Section 51 of the Arms Act 1983 can be found at <http://www.legislation.govt.nz/act/public/1983/0044/latest/DLM72999.html>

³ The Law Commission's report "Maximum Penalties for Criminal Offences" (SP21) can be found at <http://www.lawcom.govt.nz/our-projects/maximum-penalties>

⁴ Section 55 of the Arms Act 1983 can be found at <http://www.legislation.govt.nz/act/public/1983/0044/latest/DLM73305.html>

of 5 years imprisonment. The Law Commission considered that the difference between the two offences has “no possible justification”. We agree with the Law Commission.

Why the bill should not proceed

The Government members of the committee do not support the bill proceeding. We note that section 272 makes it unlawful to do what may be an entirely lawful act (possessing or making an explosive with all necessary approvals for lawful purposes) with an intent to do something that may never actually occur, and which may not even be possible. We therefore consider that section 272’s current maximum penalty is sufficient.

Although we agree that section 272 has an intent element absent from section 202A of the Crimes Act and section 51 of the Arms Act, we consider that these sections contain additional elements not present in section 272, which justify their higher penalty.

We are advised that the Ministry of Justice supports retaining the current penalty level for section 272 for a number of reasons, including:

- the explosive may be lawfully possessed or manufactured
- the explosive need not be in a public place that would increase the risk of harm to others
- there does not need to be intent of any kind to cause bodily injury, or the threat or fear of violence
- the conduct is likely to be less immediate or proximate to the commission of a harmful act than for those other offences.
- the section covers an intent to commit any offence (cf. section 55 of the Arms Act)
- the section deals with conduct insufficient to amount to an attempt to commit an offence.

We agree. We also note that we do not think it desirable to increase the penalty for one explosives offence without further analysis of explosives offences generally.

Appendix

Committee procedure

The Crimes (Increased Penalty for Providing Explosive to Commit Crime) Amendment Bill was referred to the Law and Order Committee of the 51st Parliament on 8 March 2017. The closing date for submissions was 7 April 2017. The committee received and considered 3 submissions.

The bill was reinstated with this committee in the current Parliament. We met between 30 November 2017 and 1 March 2018 to consider it.

We received advice from the Ministry of Justice.

Committee members

Raymond Huo (Chairperson)

Amy Adams

Ginny Andersen

Chris Bishop

Andrew Falloon

Matt King

Greg O'Connor

Priyanca Radhakrishnan

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.