

Patron - Sir Anand Satyanand

5 February, 2015

Clerk of the Committee
Law and Order Select Committee
Select Committee Office
Parliament Buildings
Wellington

Re: Organised Crime and Anti-Corruption Legislation Bill

1. Transparency International New Zealand is the New Zealand chapter of Transparency International, the global civil society organisation against corruption. We are a not-for-profit incorporated society with charitable status. We are non-political and non-partisan.
2. We wish to make the follow submission:
3. Transparency International New Zealand welcomes the introduction of the Organised Crime and Anti-corruption Legislation Bill 2014. Not only will its introduction strengthen existing legislation, it will also improve our standing as a country that takes its international commitments seriously.
4. **Transparency International New Zealand would like the Bill to more fully clarify that facilitation payments are bribes.** This would also align New Zealand with other jurisdictions that have identified facilitation payments to governmental officials as bribes¹.
5. A bribe is a bribe if it is a large payment or a small payment. The United Nations Convention against Corruption (UNCAC) prohibits bribes to government officials in all forms; it does not therefore distinguish between small or large bribes.
6. **Making facilitation payments unlawful will affirm New Zealand's commitment to preventing corruption and to growing integrity.** At stake is New Zealand's reputation as one of the least corrupt countries in the world. By taking a strong stance on facilitation payments, and providing clarity to all New Zealand organisations trading and operating abroad, the government will also send a clear and important message to the international community that honest transactions are expected when working with New Zealand Inc. and New Zealand companies.
7. Transparency International New Zealand recognizes that the introduction of the Bill finally paves the way, after 11 years², for New Zealand's ratification of UNCAC. New Zealand is just one of a handful of signatories still to ratify. Compliance with UNCAC is a requirement for ratification. UNCAC does not differentiate between bribes and facilitation payments because

¹ Canada http://laws-lois.justice.gc.ca/eng/annualstatutes/2013_26/FullText.html

UK <http://www.sfo.gov.uk/bribery--corruption/the-bribery-act/facilitation-payments.aspx>

See also OECD recommendations http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf (page 26)

² New Zealand became a signatory to the Convention on 10 December, 2003.

they are the same thing. We need to ensure the Bill enables achievement of ratification, and a review of implementation³.

8. UNCAC, Article 16 states in relation to the: *Bribery of foreign public officials and officials of public international organizations, that:*

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

9. We propose the clarification of facilitation payments as bribes because facilitation payments are already illegal in almost all of the countries where they are paid.
10. If a facilitation payment were a due advantage it would be regulated by law, classified as a fee/expense, be budgeted and be recorded for legitimate tax or transaction cost treatment.
11. Facilitation payments line the pockets of corrupt government officials, are secret and therefore provide an alternative operating mechanism minimizing transaction costs and removing legal and ethical constraints of operators.
12. **The Bill must ensure consistencies with foreign laws and international standards** The international movement towards criminalising facilitation payments is demonstrated by the UK bribery legislation. The UK's Bribery Act prohibits facilitation payments. For those New Zealand businesses operating in overseas jurisdictions subject to UK law, the law in New Zealand represents an inconsistency.
13. The Asia Pacific Economic Cooperation (APEC)⁴ has also encouraged businesses to eliminate the use of facilitation payments.
14. **An outright ban of facilitation payments removes doubt and provides clear direction** to businesses seeking to implement systems and training to stop bribery.
15. Transparency International New Zealand, the Serious Fraud Office and Business New Zealand worked together in 2013 to launch free anti-corruption training for kiwi businesses. The training recommends that facilitation payments are not paid, however we look forward to updating our information to confirm facilitation payments are unlawful in New Zealand.
16. Transparency International New Zealand would appreciate the opportunity to discuss our submission with the Committee. Arrangements can be made by contacting is Suzanne Snively, Chair, Transparency International New Zealand on 021 925 689.

Yours sincerely

On behalf of the Transparency International New Zealand Board

Suzanne Snively
Chair

³ See the United Nations' review of Australia's compliance with UNCAC
<http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1253616e.pdf>

⁴ http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Task-Groups/~media/Files/Groups/ACT/07_act_codebrochure.ashx