

5 May 2021

Attorney-General

Crimes (Robbery) Amendment Bill – consistency with the New Zealand Bill of Rights Act 1990

Our Ref: ATT395/331

1. We advise on the consistency of the Crimes (Robbery) Amendment Bill (**the Bill**) with rights affirmed by the New Zealand Bill of Rights Act 1990 (**the Bill of Rights Act**). The Bill is a Member's bill that was introduced on 25 March 2021.
2. We consider the Bill does not engage any of the rights in the Bill of Rights Act and is therefore **consistent** with it. As the Bill is short, we have **appended** it to this vetting advice.

Purpose and structure of the Bill

3. The Bill's aim is to respond to concerns raised by police that under the existing law, the offence of robbery is difficult to establish in practice when the item taken is a car. This is because as the provision is currently worded, the offence of robbery cannot occur without theft (robbery being theft accompanied by violence or threats thereof). Theft is defined in s 219 of the Crimes Act 1961, and includes the mental element of an intent to permanently deprive the owner of their property. An intent to permanently deprive can be difficult to prove in the context of carjacking, for example where the vehicle is taken but subsequently abandoned a short while later, or where the underlying purpose of taking the car was "joy riding". The unlawful taking of vehicles can therefore also be charged under s 226 of the Crimes Act 1961, which creates liability for taking a vehicle dishonestly and without claim of right, "but not so as to be guilty of theft". That provision does not require proof of an intent to permanently deprive.

4. The Bill seeks to amend the offence of robbery in the Crimes Act (s 234) by inserting the words “or unlawful taking” after “theft”, so that the provision will read:

234 Robbery

- (1) Robbery is theft [*or unlawful taking*] accompanied by violence or threats of violence, to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen.
 - (2) Every one who commits robbery is liable to imprisonment for a term not exceeding 10 years.
5. The Explanatory Note describes the purpose of this amendment as “to ensure that the offence of robbery can be made out where a perpetrator uses violence or threats of violence to take property despite not intending to deprive the owner permanently of the property”. The clause does not, however, refer to s 226 of the Crimes Act or otherwise define “unlawful taking”.
 6. The Bill further provides that “taking” will have “the same meaning as in section 219(3) and (4)” of the Crimes Act (cl 4(2)). The Bill does not presently purport to insert that wording directly into the Crimes Act. Section 219 is the offence provision applicable to theft. Sections 219(3) and (4) provide:
 - (3) In this section, taking does not include obtaining ownership or possession of, or control over, any property with the consent of the person from whom it is obtained, whether or not consent is obtained by deception.
 - (4) For tangible property, theft is committed by a taking when the offender moves the property or causes it to be moved.
 7. Subsection (3) provides that there is no theft where consent is obtained. Subsection (4) specifies that the actus reus of theft is complete when property is moved, however slightly.

Consistency with the Bill of Rights Act

8. We have considered the amendment’s consistency with the Bill of Rights Act. We do not consider it engages any of the rights protected and on that basis the Bill is consistent with the Bill of Rights Act.
9. The Bill’s aim is to extend an existing type of criminal liability for vehicle conversion offences to fall within the ambit of the offence of robbery. We note that without direct reference to s 226 of the Crimes Act, a court may hold that the reference to “unlawful taking” does not in fact extend the definition of robbery to include offending where an intent to permanently deprive is not made out. In any event, we consider that the intended extension of liability does not impact on any of the rights protected in the Bill of Rights Act. For completeness, we note the Bill does not purport to apply retrospectively.
10. We therefore consider the Bill is consistent with the Bill of Rights Act.

Review of this advice

11. In accordance with Crown Law's policies, this advice has been peer reviewed by Kim Laurenson, Crown Counsel.



Zoe Hamill
Crown Counsel

~~Noted~~ / ~~Approved~~ / ~~Not Approved~~



Hon David Parker
Attorney-General

7 / 5 / 2021