

Crimes Amendment Bill (No 2)

Government Bill

As reported from the Social Services
Committee

Commentary

Recommendation

The Social Services Committee has examined the Crimes Amendment Bill (No 2) and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend various aspects of the Crimes Act 1961. It is intended to protect children and vulnerable adults from assault, neglect, and ill-treatment by creating liability for people who are not actively involved in the mistreatment, but have frequent contact with the child or vulnerable adult and fail to try to protect them from mistreatment by others, of which they are aware. It would also extend the duties of parents and those with actual care or charge of vulnerable adults and children, and broaden the offence of ill-treatment or neglect of a child or vulnerable adult.

We note that the bill would alter the “claim of right” defence, which is available for some offences relating to property when the accused believed they were legally entitled to deal with the property in the way they did. The bill would make it clear that the defence cannot be used

in a situation where there is no belief in a proprietary or possessory claim in the affected property. We are aware that in New Zealand there has been an instance of substantial damage where accused persons have successfully argued a claim of right defence, although the claim was not based on a belief in any such ownership right in the affected property. The bill would remove the ability for an accused to successfully rely on a defence based on a belief unrelated to a proprietary or possessory right.

We also note that the bill would increase the penalty for carrying an offensive weapon in circumstances that prima facie show an intention to use it without reasonable excuse. This reflects increasing concern by the public and judiciary that the current penalties for these offences are not sufficient, in the light of the increasing number of stabbings and a growing incidence of carrying weapons, particularly knives.

Further, the bill would broaden the offence of meeting a young person under 16 years of age following sexual grooming for the purposes of committing an unlawful sexual act with him or her, to include situations where the offender believes that he or she has been sexually grooming a young person, but has in fact been in communication with a constable acting covertly.

Protection of a child or vulnerable adult

The bill seeks to create a new enforceable legal responsibility making a person criminally liable for the failure to protect a child or vulnerable person where another person omitted to perform a legal duty, and the accused was aware of the duty and the harm the omission would inflict on the child or vulnerable person.

We were concerned that, as introduced, the bill would create an offence even if an omission by the person legally required to perform it did not create a clear legal liability. We therefore recommend amending new section 195A(1)(a) in clause 7 so that a person would be liable for failure to protect a child or vulnerable person in a situation where there was an omission to perform a legal duty only if the omission was a major departure from the standard of care expected.

We recommend amending new section 195A(3) in clause 7 to state that an offender must be older than 18 years at the time of the act or omission in question to be prosecuted for failure to protect a child

or vulnerable adult under this section. Under the provision as introduced, a person under 18 years of age could only be prosecuted if they were a parent of the victim. We note that new section 152 in clause 6 would impose a duty on a parent or guardian to provide their child with necessities and takes reasonable steps to protect the child from injury. We consider that this provides adequately for the liability of a younger parent who fails to protect their child, and see no reason to duplicate these liabilities.

We recommend amendments to new section 150A(2) in clause 6, and new section 195(1) in clause 7. These provisions would make a person criminally responsible for omitting to perform a legal duty in certain circumstances. However, we are aware that the current legislation establishing some of these legal duties explicitly requires duties to be discharged, in addition to requiring that they be performed. We therefore believe these provisions, and similarly new section 195A(1)(a) in clause 7, should refer to a person omitting to “discharge or perform” a legal duty, for consistency with existing legislation.

We considered whether or not these provisions should amount to an offence subject to the three-stage regime under sections 86A to 86I of the Sentencing Act 2002. All such offences require a positive violent or sexual act by the perpetrator, which is fundamentally inconsistent with the offence provisions in this bill.

Other issues

We recommend minor amendments to clause 4 to clarify the “claim of right” defence.

We recommend inserting new clause 10A. This would effect a consequential amendment to the Summary Proceedings Act 1957, and would ensure that the Schedule 1 list of indictable offences that may be tried summarily by District Court Judges was consistent with the amendments effected by this bill.

Appendix

Committee process

The Crimes Amendment Bill (No 2) was referred to the committee on 10 May 2011. The closing date for submissions was 3 June 2011. We received and considered 39 submissions from interested groups and individuals. We heard 10 submissions.

We received advice from the Ministry of Justice.

Committee membership

Katrina Shanks (Chairperson)

Jacinda Ardern

Chester Borrows

Tim Macindoe

Todd McClay

Dr Rajen Prasad

Jami-Lee Ross

Su'a William Sio

Metiria Turei

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

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Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act amended	2
Part 1		
Amendments to principal Act		
4	Interpretation	2
5	Meeting young person under 16 following sexual grooming, etc	3
6	New sections 150A to 152 substituted	3
	150A Standard of care applicable to persons under legal duties or performing unlawful acts	3
	151 Duty to provide necessities and protect from injury	3
	152 Duty of parent or guardian to provide necessities and protect from injury	4
7	New sections 195 and 195A substituted	4
	195 Ill-treatment or neglect of child or vulnerable adult	4
	195A Failure to protect child or vulnerable adult	4
8	Possession of offensive weapons or disabling substances	6
Part 2		
Amendments to other enactments and transitional provision		
9	Amendment to Bail Act 2000	6

10	Amendment to Summary Offences Act 1981	6
10A	Amendment to Summary Proceedings Act 1957	6
11	Transitional provision	6

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Crimes Amendment Act (No 2) **2011**.
- 2 Commencement**
This Act comes into force 6 months after the date on which it receives the Royal assent. 5
- 3 Principal Act amended**
This Act amends the Crimes Act 1961.

Part 1
Amendments to principal Act

- 4 Interpretation** 10
 - (1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
 - “**unlawful act** means a breach of any Act, regulation, rule, or bylaw
 - “**vulnerable adult**, for the purposes of **sections 151, 195, and 195A**, means a person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person”. 15
 - (2) The definition of **claim of right** in section 2(1) is amended by omitting “that the act is lawful” and substituting “at the time of the act ~~of~~ in a proprietary or possessory right in property; ~~being property~~ in relation to which the offence is alleged to have been committed”. 20

5 Meeting young person under 16 following sexual grooming, etc

(1) The heading to section 131B is amended by omitting “**under 16**”.

(2) Section 131B is amended by inserting the following subsection after subsection (1):

“(1A) A reference in this section to a young person under the age of 16 years or the young person includes a reference to a constable who pretends to be a young person under the age of 16 years (the **fictitious young person**) if the offender, when taking any of the actions described in subsection (1), believed that the fictitious young person was a young person under the age of 16 years.”

6 New sections 150A to 152 substituted

Sections 150A to 152 are repealed and the following sections substituted:

“150A Standard of care applicable to persons under legal duties or performing unlawful acts

“(1) This section applies in respect of—

“(a) the legal duties specified in any of **sections 151, 152, 153, 155, 156, and 157**; and

“(b) an unlawful act referred to in section 160 where the unlawful act relied on requires proof of negligence or is a strict or absolute liability offence.

“(2) For the purposes of this Part, a person is criminally responsible for omitting to discharge or perform a legal duty, or performing an unlawful act, to which this section applies only if, in the circumstances, the omission or unlawful act is a major departure from the standard of care expected of a reasonable person to whom that legal duty applies or who performs that unlawful act.

“151 Duty to provide necessaries and protect from injury

Every one who has actual care or charge of a person who is a vulnerable adult and who is unable to provide himself or herself with necessaries is under a legal duty—

“(a) to provide that person with necessaries; and

“(b) to take reasonable steps to protect that person from injury.

“152 Duty of parent or guardian to provide necessities and protect from injury

Every one who is a parent, or is a person in place of a parent, who has actual care or charge of a child under the age of 18 years is under a legal duty—

“(a) to provide that child with necessities; and

“(b) to take reasonable steps to protect that child from injury.”

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7 New sections 195 and 195A substituted

Section 195 is repealed and the following sections are substituted:

“195 Ill-treatment or neglect of child or vulnerable adult

“(1) Every one is liable to imprisonment for a term not exceeding 10 years who, being a person described in **subsection (2)**, intentionally engages in conduct that, or omits to discharge or perform any legal duty the omission of which, is likely to cause suffering, injury, adverse effects to health, or any mental disorder or disability to a child or vulnerable adult (the **victim**) if the conduct engaged in, or the omission to perform the legal duty, is a major departure from the standard of care to be expected of a reasonable person.

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“(2) The persons are—

“(a) a person who has actual care or charge of the victim; or

“(b) a person who is a staff member of any hospital, institution, or residence where the victim resides.

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“(3) For the purposes of this section and **section 195A**, a **child** is a person under the age of 18 years.

“195A Failure to protect child or vulnerable adult

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“(1) Every one is liable to imprisonment for a term not exceeding 10 years who, being a person described in **subsection (2)**, has frequent contact with a child or vulnerable adult (the **victim**) and—

- “(a) knows that the victim is at risk of death, grievous bodily harm, or sexual assault as the result of ~~an unlawful act by another person or an omission by another person to perform a legal duty; and—~~
- ~~“(i) an unlawful act by another person; or~~ 5
- ~~“(ii) an omission by another person to discharge or perform a legal duty if, in the circumstances, that omission is a major departure from the standard of care expected of a reasonable person to whom that legal duty applies; and~~ 10
- “(b) fails to take reasonable steps to protect the victim from that risk.
- “(2) The persons are—
- “(a) a member of the same household as the victim; or
- “(b) a person who is a staff member of any hospital, institution, or residence where the victim resides. 15
- “(3) A person may not be charged with an offence under this section if he or she was under the age of 18 at the time of the act or omission~~unless—~~.
- ~~“(a) the victim was a child at the time of the act or omission; and~~ 20
- ~~“(b) the person is a parent of the child.~~
- “(4) For the purposes of this section,—
- “(a) a person is to be regarded as a member of a particular household, even if he or she does not live in that household, if that person is so closely connected with the household that it is reasonable, in the circumstances, to regard him or her as a member of the household: 25
- “(b) where the victim lives in different households at different times, **the same household** refers to the household in which the victim was living at the time of the act or omission giving rise to the risk of death, grievous bodily harm, or sexual assault. 30
- “(5) In determining whether a person is so closely connected with a particular household as to be regarded as a member of that household, regard must be had to the frequency and duration of visits to the household and whether the person has a familial relationship with the victim and any other matters that may be relevant in the circumstances.” 35

- 8 Possession of offensive weapons or disabling substances**
Section 202A(4) is amended by omitting “2 years” and substituting “3 years”.

Part 2
Amendments to other enactments and transitional provision 5

9 Amendment to Bail Act 2000

- (1) This section amends the Bail Act 2000.
- (2) Section 7(3)(b) and (c) are repealed and the following paragraphs substituted: 10
- “(b) **section 151** (duty to provide necessaries and protect from injury):
- “(c) **section 152** (duty of parent or guardian to provide necessaries and protect from injury):”.

10 Amendment to Summary Offences Act 1981 15

- (1) This section amends the Summary Offences Act 1981.
- (2) Section 10A is repealed.

10A Amendment to Summary Proceedings Act 1957

- (1) This section amends the Summary Proceedings Act 1957.
- (2) Part 1 of Schedule 1 is amended by omitting the item relating to sections 151, 152, and 153 and substituting the following item: 20
- “153 Duty of employers to provide necessaries”.
- (3) Part 1 of Schedule 1 is amended by omitting the item relating to section 195 and substituting the following items: 25
- “195 Ill-treatment or neglect of child or vulnerable adult
“195A Failure to protect child or vulnerable adult”.

11 Transitional provision

- (1) The amendments and repeals made by this Act do not apply to any offence committed or alleged to have been committed (in whole or in part) before the commencement of this Act and the principal Act as in force before the commencement of this Act continues to apply to any such offence. 30

Crimes Amendment Bill (No 2)

- (2) Section 414 of the principal Act has effect (with any necessary modifications) if the date on which the offence was committed cannot be established with sufficient certainty.

Legislative history

12 April 2011
10 May 2011

Introduction (Bill 284–1)
First reading and referral to Social Services
Committee
