

Crimes (Child Exploitation Offences) Amendment Bill

Member's Bill

Explanatory note

General policy statement

As the popularity of online platforms increase, so too do the incidences of harm, particularly harm experienced by young people. The nature of the internet means young people access online platforms with little adult oversight, potentially exposing them to harm.

A survey conducted in partnership between Netsafe and the Ministry for Women into the experiences of teenagers with online risk and harm found:

- Seven in 10 teens have experienced at least one type of unwanted digital communication in the past year.
- Nearly 19% of teens experienced an unwanted digital communication that had a negative impact on their daily activities, the most common of which involved being contacted by a stranger.
- 19% of young people have been asked to share a nude or nearly nude image of themselves

This Bill seeks to help protect children from harm online and is modelled on recent Australian legislation. The Bill amends the Crimes Act 1961 to provide for additional offences relating to persons of or over the age of 18 using an electronic communication (such as a social media platform)—

- to make false representations relating to their age or identity intending to meet with a persons under 16; and
- to procure or plan to cause harm to persons under 16.

The Bill also increases the penalty level for offences against section 131B of the Act, which relates to sexual grooming of children online, to 10 years' imprisonment.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides for this Bill to come into force on the day after Royal assent.

Clause 3 identifies the Crimes Act 1961 as the Act being amended by the Bill (the **principal Act**).

Clause 4 inserts *new sections 126A and 126B* into the principal Act to provide for two new offences regarding persons over the age of 18 years using digital communications to communicate with young people under the age of 16 either with the intent to mislead the young person, or with the intent to cause the young person harm.

Clause 5 amends section 131B of the principal Act to increase the penalty level from 7 to 10 years' imprisonment.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Crimes (Child Exploitation Offences) Amendment Act **2021**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Crimes Act 1961 (the **principal Act**).

4 New sections 126A and 126B inserted

After section 126 insert: 10

126A Digital communication with young person under 16 with intent to mislead

- (1) A person of or over the age of 18 years is liable to imprisonment for a term not exceeding 5 years if he or she —
- (a) communicates, by means of a digital communication, with a person under the age of 16 years (the **young person**) with the intent to mislead the young person as to the person's age or identity; and
 - (b) subsequently meets or arranges to meet with the young person.
- (2) A reference in **subsection (1)** to a person under the age of 16 years, or to the young person, includes a reference to a constable (as defined in section 2(1)) who pretends to be a person under the age of 16 years (the **fictitious young person**) if the person charged with an offence against **subsection (1)**, when communicating with the fictitious young person, believed that the fictitious young person was a person under the age of 16 years.
- (3) It is a defence to a charge under **subsection (1)** if the person charged proves that,—
- (a) before the time he or she took the action concerned, he or she had taken reasonable steps to find out whether the young person was of or over the age of 16 years; and
 - (b) at the time he or she took the action concerned, he or she believed on reasonable grounds that the young person was of or over the age of 16 years.
- (4) In this section, and **section 126B**, **digital communication**—
- (a) means any form of electronic communication; and
 - (b) includes any text message, writing, photograph, picture, recording, or other matter that is communicated electronically.

126B Digital communication with young person under 16 with intent to cause harm

- (1) A person of or over the age of 18 years is liable to imprisonment for a term not exceeding 7 years if he or she communicates, by means of a digital communication, with a person under the age of 16 years (the **young person**) intending to cause harm to the young person or being reckless as to whether the young person is harmed.
- (2) A reference in **subsection (1)** to a person under the age of 16 years, or to the young person, includes a reference to a constable (as defined in section 2(1)) who pretends to be a person under the age of 16 years (the **fictitious young person**) if the person charged with an offence against **subsection (1)**, when communicating with the fictitious young person, believed that the fictitious young person was a person under the age of 16 years.
- (3) It is a defence to a charge under **subsection (1)** if the person charged proves that,—

- (a) before the time he or she took the action concerned, he or she had taken reasonable steps to find out whether the young person was of or over the age of 16 years; and
- (b) at the time he or she took the action concerned, he or she believed on reasonable grounds that the young person was of or over the age of 16 years.

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5 Section 131B replaced (Meeting young person following sexual grooming, etc)

In section 131B(1) replace “7 years” with “10 years”.