

# **Crimes (Child Exploitation Offences) Amendment Bill**

Member's Bill

As reported from the Justice Committee

## **Commentary**

### **Recommendation**

The Justice Committee has examined the Crimes (Child Exploitation Offences) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

### **The bill as introduced**

This bill is a Member's bill in the name of Ginny Andersen MP. It seeks to amend the Crimes Act 1961. The bill aims to protect children who are at risk of harm from exploitation committed through digital communications. The bill as introduced would introduce two new offences relating to digital communications by a person aged 18 years or older with a young person under the age of 16 years.

The bill would also amend the penalty for the existing offence in section 131B of the Act. That offence relates to meeting a young person following sexual grooming. The bill would increase the penalty from a maximum of 7 years imprisonment to 10 years.

### **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

### **Proposed amendments**

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

## **Replacing two offences with a single offence**

Clause 4 of the bill as introduced would insert new sections 126A and 126B into the Crimes Act. New section 126A would make it an offence in certain circumstances for someone over the age of 18 to digitally communicate with a young person under the age of 16. The older person would have to have intended to mislead the young person about their age or identity, and subsequently meet or arrange to meet with the young person. Someone convicted of this offence would be liable to up to 5 years imprisonment.

New section 126B would make it an offence for someone over the age of 18 to digitally communicate with a person under the age of 16, intending to cause harm to the young person or being reckless as to whether the young person is harmed. Someone convicted of this offence would be liable to up to 7 years imprisonment.

## **Inclusion of in-person grooming behaviours**

The intent of the bill is to protect children from harm. As introduced, the bill focuses on digital harm. We received a number of submissions from various organisations who define child grooming behaviours as broad strategies used to facilitate sexual conduct with young people occurring both online and in person. We note that the policy intent of the bill is to prevent sexual grooming of children online. We believe that any new offences should cover digital harm, as well as any other type of communication or conduct with a young person that leads to harmful, prohibited behaviour. We discuss later our recommendation for what specific prohibited behaviours should be included in the offence.

## **Sexual grooming offence should align with existing offences in the Crimes Act**

The bill as introduced proposes that the new section 126A and 126B offences would be inserted into Part 7 of the Act under “crimes against morality and decency”. We consider that these proposed offences should be replaced with an offence that more closely aligns with existing section 131B of the Crimes Act under “sexual crimes”. Section 131B is a sexual grooming offence that requires the “groomer” to meet or attempt to meet the young person. Our new offence would similarly capture grooming for sexual conduct but would not require the “groomer” to meet the young person.

## **Our proposed new offence**

We have learned that much of the behaviour that the bill intends to capture would be covered under existing offences in the Crimes Act and the Harmful Digital Communications Act 2015. We believe that any new offence should not repeat what already exists in legislation.

We recommend replacing clause 4 of the bill with our proposed clause 4, to insert section 131AB into the Act. This section would make it an offence for someone over the age of 18 to communicate by words or conduct with a person under the age of 16. In committing the offence, there would need to be an intention to facilitate the young person engaging or being involved in conduct that would be an offence under either:

- Part 7 of the Act (relating to crimes against morality and decency, sexual crimes, and crimes against public welfare)
- paragraphs (a)(i), (d)(i), (e)(i), or (f)(i) of section 98AA(1) of the Act (relating to sexual exploitation of a person).

## **Penalties**

We consider that any new offence should carry a penalty that aligns more closely with penalties for existing offences. For example, section 124A of the Crimes Act, which relates to indecent communication with a young person under 16, carries a penalty of up to 3 years imprisonment. Section 22 of the Harmful Digital Communications Act, which relates to causing harm by posting a digital communication, carries a penalty of up to 2 years imprisonment or a fine of up to \$50,000 for an individual.

As introduced, the bill's proposed offences would carry penalties of up to 5 years (new section 126A) and 7 years (new section 126B) imprisonment.

A person convicted of an offence under our proposed section 131AB would be liable to up to 3 years imprisonment. This penalty would align with penalties for similar existing offences in the Crimes Act and Harmful Digital Communications Act.

## **Deleting proposed increase in penalty under section 131B**

Clause 5 proposes an amendment to section 131B of the Act which contains the offence for meeting a young person following sexual grooming. The bill would increase this penalty from a maximum of 7 years imprisonment to 10 years.

This proposed penalty does not align with penalties for similar existing offences in the Crimes Act and Harmful Digital Communications Act. We consider that the penalty for the existing section 131B offence should not be amended. Accordingly, we recommend that clause 5 of the bill be deleted.

## **Appendix**

### **Committee process**

The Crimes (Child Exploitation Offences) Amendment Bill was referred to the committee on 20 October 2021.

We called for submissions on the bill with a closing date of 10 December 2021. We received and considered 25 submissions from interested groups and individuals. We heard oral evidence from 6 submitters.

We received advice on the bill from the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

### **Committee membership**

Ginny Andersen (Chairperson)

Hon Paul Goldsmith

Dr Emily Henderson

Nicole McKee

Hon Mark Mitchell

Simon O'Connor

Willow-Jean Prime

Vanushi Walters

Arena Williams

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Ginny Andersen*

## **Crimes (Child Exploitation Offences) Amendment Bill**

Member's Bill

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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:

##### **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 — 5
- (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. 10
- (3) It is a defence to a charge under **subsection (1)** if the person charged proves that, — 15
- (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 20
  - (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** — 25
- (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. 30
- (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 35



~~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~~ 5
- (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.~~ 10

#### 4 **New section 131AB inserted (Grooming for sexual conduct with young person)**

After section 131A, insert:

##### **131AB Grooming for sexual conduct with young person**

- (1) A person aged 18 years or over is liable to imprisonment for a term not exceeding 3 years, if— 15
- (a) they communicate by words or conduct with a person under the age of 16 years (the **young person**); and
- (b) they do so intending to facilitate the young person engaging or being involved in conduct that would be an offence against this Part, or against any of paragraphs (a)(i), (d)(i), (e)(i), or (f)(i) of section 98AA(1). 20
- (2) It is immaterial whether or not a response is made to the communication by the young person.
- (3) 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. 25
- (4) It is a defence to a charge under **subsection (1)** if the person charged proves that,— 30
- (a) before the time they took the action concerned, they 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 they took the action concerned, they believed on reasonable grounds that the young person was of or over the age of 16 years. 35

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

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

## Crimes (Child Exploitation Offences) Amendment Bill

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### Legislative history

5 August 2021  
20 October 2021

Introduction (Bill 59–1)  
First reading and referral to Justice Committee

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Wellington, New Zealand:

Published under the authority of the House of Representatives—2022