

[AS REPORTED FROM THE CRIMES AMENDMENT BILL
COMMITTEE]

House of Representatives, 2 May 1975.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Mr V. S. Young

CRIMES AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the law relating to homosexual offences and to amend the Crimes Act 1961

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5 WHEREAS it seems desirable to bring the law relating to homosexual acts between adult males in private into line with that of the United Kingdom of Great Britain and Northern Ireland, Canada, South Australia, and many other countries; and to remove the anomalous distinction between the law
10 relating to homosexual acts between males and females; And whereas it is desirable to increase the protection afforded by the law to young persons against homosexual molestation.

15 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Crimes Amendment Act ~~(1974)~~ 1975 and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as the principal Act).

No. 79—2

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2. Penalty for indecency between man and boy—The principal Act is hereby amended by omitting from subsection (1) of section 140 the word “ten”, and substituting the word “fourteen”.

5

New

2. New sections inserted—The principal Act is hereby amended by repealing sections 141 and 142 and substituting the following:

“141. **Indecency between males**—(1) Every one is liable to imprisonment for a term not exceeding 5 years who, being a male—

“(a) Indecently assaults any other male; or

“(b) Does anything to any other male with the latter’s consent, which but for such consent would have been an indecent assault, such consent being obtained by force or threats or fear of bodily harm or by a false and fraudulent representation as to the nature and quality of the act.

“(2) Every one is liable to imprisonment for a term not exceeding 5 years who, being a male of or over the age of 20 years—

“(a) Does any indecent act with or upon any male under the age of 20 years; or

“(b) Induces or permits any male under the age of 20 years to do any indecent act with or upon him.

“(3) Every one is liable to imprisonment for a term not exceeding 5 years who, being a male under the age of 20 years—

“(a) Does any indecent act with or upon any other male; or

“(b) Induces or permits any other male to do any indecent act with or upon him.

“(4) Every one is liable to imprisonment for a term not exceeding 5 years who, being a male—

“(a) Does any indecent act with or upon any other male; or

“(b) Induces or permits any other male to do any indecent act with or upon him—

if he knows or has good reason to believe that the other male is severely subnormal.

New

“(5) For the purposes of subsection (4) of this section, a male is severely subnormal if he is mentally subnormal, within the meaning of the Mental Health Act 1969, to the extent that he is incapable of living an independent life or of guarding himself against serious exploitation or common physical dangers.

“(6) Every one is liable to imprisonment for a term not exceeding 5 years who, being a male—

10 “(a) Does any indecent act with or upon any other male; or

“(b) Induces or permits any other male to do any indecent act with or upon him—

15 if he knows or has good reason to believe that the other male is mentally disordered, within the meaning of the Mental Health Act 1969, so as to be unable to exercise the power of choice of an ordinary person, and the act takes place in any hospital, within the meaning of that Act, in which the other male is a patient.

20 “(7) No boy under the age of 16 years shall be charged with being a party to an offence against subsection (2) of this section, or with committing or being a party to an offence against subsection (3) of this section, unless the other male was under the age of 20 years.

25 “(8) It is no defence to a charge under subsection (2), subsection (3), subsection (4), subsection (5), or subsection (6) of this section that the other party consented.

“142. **Sodomy**—(1) Every one commits an offence who—

30 “(a) Commits sodomy on any other person without that person’s consent; or

“(b) Being of or over the age of 20 years commits sodomy on any person under the age of 20 years with the consent of that person; or

35 “(c) Being under the age of 20 years commits sodomy on any other person with the consent of that person; or

40 “(d) Commits sodomy on any other person with that person’s consent if he knows or has good reason to believe that the other person is severely subnormal, within the meaning of subsection (5) of section 141 of this Act; or

New

- “(e) Commits sodomy on any other person with that person’s consent if he knows or has good reason to believe that the other person is mentally disordered, within the meaning of the Mental Health Act 1969, so as to be unable to exercise the power of choice of an ordinary person, and the act of sodomy takes place in a hospital, within the meaning of that Act, in which the other person is a patient. 5
- “(2) Every one who commits an offence under subsection (1) of this section is liable,— 10
- “(a) Where the act of sodomy is committed on a female, to imprisonment for a term not exceeding 14 years; or 15
- “(b) Where the act of sodomy is committed on a male, and at the time of the act that male is under the age of 16 years and the offender is of or over the age of 20 years, to imprisonment for a term not exceeding 14 years; or 20
- “(c) In any other case, to imprisonment for a term not exceeding 7 years. 25
- “(3) This offence is complete upon penetration.
- “(4) Where sodomy is committed on any person under the age of 16 years he shall not be charged with being a party to that offence, but he may be charged with being a party to an offence against section 141 of this Act in any case to which that section is applicable. 25
- “(5) The consent of the person against whom the offence is alleged to have been committed shall not be a defence to a charge under paragraph (a) of subsection (1) of this section, if it is proved that the consent was obtained by force or threats or fear of bodily harm or by a false and fraudulent representation as to the nature and quality of the act.” 30

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3. Indecencies between consenting males in private—The principal Act is hereby amended by inserting after section 140 the following section:

“140A. No male of or over the age of twenty-one years is liable under sections 141 and 142 of the principal Act, when any act therein is committed in private with or upon a consenting male of or over the age of twenty-one years except when either of the parties is a ‘patient’ within the meaning of the Mental Health Act 1969. 40

Struck Out

5 "Provided that any male under this section shall be liable if it is proved that the consent was obtained by force or threats or fear of bodily harm or by false and fraudulent representation as to the nature and the quality of the act."

New

10 **3. Brothelkeeping**—(1) Section 147 of the principal Act is hereby amended by omitting from subsection (2) the words "one woman or more" and substituting the words "one person or more".

(2) Section 146 of the principal Act is hereby repealed.

Struck Out

15 **4. Keeping a place of resort for homosexual acts**—The principal Act is hereby further amended by repealing section 146, and substituting the following section:

"146. (1) Every one is liable to imprisonment for a term not exceeding ten years who—

20 "(a) Keeps or manages, or acts or assists in the management of, any premises used as a place of resort for the commission of indecent acts between males or between females; or

25 "(b) Being the tenant, lessee, or occupier of any premises, knowingly permits the premises or any part thereof to be used as a place of resort for the commission of indecent acts between males or between females; or

30 "(c) Being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part thereof with the knowledge that the premises are to be used as a place of resort for the commission of indecent acts between males or between females, or that some part thereof is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a place of resort for the commission of such acts as aforesaid.

35 "(2) In this section, the term 'premises' means any house, room, set of rooms, or place of any kind whatever used for the purposes of resort for the commission of indecent acts, whether by one person or more."

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5. Living on the earnings of prostitution—Section 148 of principal Act is hereby amended:

- (a) By inserting the words “whether male or female” after the word “person” in paragraph (a). 5
- (b) By inserting the words “whether male or female” after the word “prostitute” in paragraph (b).

6. Procuring sexual intercourse or indecency—The principal Act is hereby further amended by repealing section 149, and substituting the following section: 10

“149. Every one is liable to imprisonment for a term not exceeding five years who, for gain or reward—

“(1) Procures or agrees or offers to procure any woman or girl to have sexual intercourse with any male who is not her husband; or 15

“(2) Notwithstanding anything in section 140A, procures or agrees or offers to procure any man or boy to commit any offence under section 140 or section 141 or section 142 of the principal Act.” 20

New

5A. New section inserted—The principal Act is hereby amended by repealing section 149 and substituting the following: 20

“149. **Procuring for reward**—Every one is liable to imprisonment for a term not exceeding 5 years who, for gain or reward— 25

“(a) Procures or agrees or offers to procure any woman or girl to have sexual intercourse with any male who is not her husband; or

“(b) Procures or agrees or offers to procure any person to do an indecent act with or upon, or to commit sodomy on, any other person.” 30

7. Prostitutes importuning passengers or being riotous—Section 46 of the Police Offences Act 1927 is hereby amended by adding the words “whether male or female” after the word “prostitute”. 35

New

7A. **Other Acts amended**—(1) The Armed Forces Discipline Act 1971 is hereby amended by inserting after section 74 the following section :

- 5 “74A. **Indecent acts, etc.**—Nothing in the Crimes Amendment Act 1975 shall prevent any act that would before the passing of that Act have been an offence under section 141 or section 142 of the Crimes Act 1961 from being an offence (not being a civil offence) under any provision of this Act.”
- 10 (2) The Police Act 1958 is hereby amended by inserting after section 33 the following section :

- 15 “33A. **Indecent acts, etc.**—Nothing in the Crimes Amendment Act 1975 shall prevent any act that would before the passing of that Act have been an offence under section 141 or section 142 of the Crimes Act 1961 from being an offence for the purposes of any provision of this Act and any regulations made under this Act.”

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- 20 **8. Past Offences**—No male of or over the age of twenty-one years shall be liable to be convicted of any offence under section 141 or section 142 of the principal Act committed before the enactment of this Act, if his offence is within section 140A of this Act after it comes into effect.

New

- 25 **3A. Past offences**—No male of or over the age of 20 years shall be liable to be convicted of an offence under section 141 or section 142 of the principal Act committed before the passing of this Act if the act that constituted his offence is not an offence after the passing of this Act.