

Crimes Amendment Bill (No 2)

Government Bill

Explanatory note

General policy statement

Aim

The overriding aim of criminal law in regard to sexual matters is to recognise and encourage respect for the sexual integrity and personal autonomy of all members of the community. The law can help to achieve this by—

- reinforcing that people are entitled to enjoy a fulfilling sexual life with other persons of their choice, irrespective of their sex;
- providing that no person should be forced to submit to a sexual act to which he or she does not consent;
- providing special coverage for some groups that are vulnerable to exploitation, such as children and young people, persons who are particularly vulnerable due to the nature of their mental health conditions and/or due to the extent of their physical and/or intellectual impairments, and certain dependent family members;
- ensuring that persons who sexually abuse others are liable to prosecution and punishment according to their culpability.

Background

This Bill represents the first overall review of the provisions of the Crimes Act since 1961 relating to sexual crimes. The current structure and sex-based nature of the Crimes Act offences, however, are largely derived from the Crimes Act 1908. Some offences can be committed only by a male, or contemplate only a female victim, or

both. This is now seen as a gap in the law. Other aspects of the law also remain cast in traditional terms, reflecting the social mores of earlier times. For example, although the broader concept of sexual connection was introduced in the 1985 reforms, many offences still treat sexual intercourse alone as the most serious sexual act.

The majority of people today are more aware of both the incidence of sexual abuse and its impact on the most vulnerable members of the community. There is also an acceptance that the majority of people with mental health conditions and/or intellectual and/or physical impairments are capable of choosing to have intimate relationships that include sexual connection.

The law has not absorbed these developments. Against this background, the objectives of this review are to ensure that—

- the law relating to sexual offences reflects more recent changes in criminal behaviour and changes in social attitudes towards sexual matters:
- offences provide for all victims of sexual abuse regardless of their sex, and the sex of the offender:
- the law's coverage for vulnerable groups is improved:
- the law is streamlined as much as possible, so that it is easier to understand and apply and to address any practical problems with its operation:
- the penalties for sexual offending are set at appropriate levels.

General proposals contained in the Bill

In light of these objectives, the Bill proposes that all sex offences be expressed and applied in a sex-neutral manner. There is no doubt that the majority of sex offenders are male, however, there is now greater understanding about the diverse situations in which sexual offending occurs and a broad expectation that offences will apply regardless of the sex of the offender and the victim. The expectation is consistent with a key principle of our democratic society—that everyone is equal in the eyes of the law.

There is one major exception to the general application of the sex-neutral principle, and that is in regard to “rape”. The current law specifies that a male rapes a female if he has sexual connection with that female by penile penetration of her genitalia. It may be that the time has come that the public no longer believes that it is necessary to use the term “rape” for one category of sexual violation, and

sexual violation should simply be “unlawful sexual connection” regardless of the sex of the victim or offender. Others may, however, consider there is symbolic value in retaining rape as a male on female offence as a separate category of sexual violation. Public opinion will be sought on this issue.

The other policy proposal of general application reflected in the Bill is that offences based on “sexual intercourse” should be extended to cover “sexual connection”, as currently defined for the purposes of the crime of sexual violation. The offences are currently based on the traditional notion that unlawful sexual intercourse is the most serious type of prohibited sexual act. Generally these offences provide an alternative to a charge of sexual violation because the matter of consent is not relevant to the charge.

A similar situation applied prior to 1985 in respect of rape. All serious assaults not involving sexual intercourse had to be charged as indecent assault. One of the features of the 1985 rape law reforms was the powerful statement that other types of sexual assault were equally grave and should be recognised as such. A new crime of sexual violation was enacted based on the wider concept of “sexual connection”. This includes penetration of the vagina or anus by any part of the body or by an object and oral-genital sex. Because the 1985 reforms were confined to rape and like offences, extending this change to other sexual offences was not considered at the time.

It is time to recognise that other forms of sexual conduct covered by “sexual connection” are just as intrusive and should be treated with the same seriousness as sexual intercourse. The effect of the change would be that the offences that currently apply to sexual intercourse only are extended to include sexual connection. These offences relate to sexual offending within a family context, against young persons and children, and against people who are vulnerable because their mental health condition or due to their physical and/or intellectual impairments.

The Bill also extends the scope of these offences, and that of sexual conduct with consent induced by certain threats, to include indecent acts.

Specific proposals contained in the Bill

More specific proposals introduced by this Bill include an extension of the matters that do not constitute consent for the purposes of charges against sexual violation to provide greater protection for

people who are vulnerable because of their mental health condition and/or due to the extent of their physical and/or intellectual impairment, and for people who have been drugged in order to remove their ability to give proper consent to or reject sexual advances. These proposals essentially codify the common law position. However, it is valuable to have a clear statement on the face of the statute.

The Bill also aims to simplify and strengthen the current offences against children and to cover the full range of sexual offending. The Bill has restructured the offences within the current age bound categories. The offences are designed to overlap each other to facilitate the laying of alternative charges in those few cases where there is uncertainty around the 11-12 and 15-16 age mark. All the time limits on prosecutions have been repealed. The penalty in regard to sexual conduct with young persons under 16 has been increased.

It is, however, important to balance the need to protect children particularly from older men and at the same time to ensure that teenage sexual experimentation does not result in young people being involved in the criminal justice system. To balance these two conflicting requirements, the Bill introduces revised defence provisions in regard to sexual conduct with young persons under 16. There are no defence provisions relating to sexual offending against children under 12.

The Bill proposes that the incest provisions should be extended not only to sexual connection (as noted above) but also to cover same sex relationships within the family unit. The Bill also expands the scope of the current offence of sexual intercourse with a girl under care and protection to all young persons under 18. The new offence provides redress for the full range of sexual abuse, ie sexual connection and indecent acts from a wide range of broadly defined close family or household members. An element of the offence requires the prosecution to prove that the accused knew that the young person consented because of his or her use of a power or authority arising from their relationship.

An offence has been established to protect people who have significant impairment but retain some capacity to make meaningful decisions about their personal lives. These people are vulnerable, and at risk of exploitation by others. The proposed offence is framed expressly around the notion of exploiting the person's vulnerability in order to engage in sexual activity. The aim is to focus on predatory conduct only so that the law does not catch situations where a person with a mental health condition or an intellectual impairment,

etc, is able and wishes to have a genuinely consensual sexual relationship with another person.

Finally, the Bill facilitates New Zealand's compliance with the Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography. The Bill creates a new offence, under *new section 98AA* of the principal Act, prohibiting dealing in children for the purpose of sexual exploitation, the removal of body parts, engagement in forced labour. The offence may apply to actions taken outside New Zealand—

- if the offender has some connection with New Zealand; or
- the offence occurred on a New Zealand ship or aircraft; or
- the victim is a New Zealand citizen or is ordinarily resident in New Zealand.

Clause by clause analysis

Clause 1 relates to the Bill's title.

Clause 2 provides for the Bill's commencement—

- *clauses 6 and 8* (and the amendments to other enactments consequential on those clauses) come into force on a date appointed by Order in Council, so as to enable the co-ordination of their commencement and New Zealand's ratification of the Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- the rest of the Bill comes into force on the day after assent.

Part 1

Amendments to principal Act

Clause 3—

- inserts into section 2(1) of the principal Act (which defines various terms used in the principal Act) a definitions of **for a material benefit** and **sexual connection**; and
- inserts *new subsection (1A)* into section 2 of the principal Act.

The definition of **for a material benefit** is the same as the definition in section 98B of the principal Act at present, and is being moved to section 2(1) because the term is now to be used in provisions of the principal Act other than sections 98C to 98F.

The definition of **sexual connection** is to the same effect as the definition in section 128(5) of the principal Act at present, and is being moved to section 2(1) because the term is now to be used in provisions of the principal Act other than section 128.

New section 2(1A) does not define doing an indecent act on another person, but makes clear that one person does an indecent act on another person whether he or she—

- does the act with or on the other person; or
- induces or permits the other person to do the act with or on him or her.

Clause 4 amends section 7A of the principal Act so as to provide for the extraterritorial application of new *section 98AA* if—

- the person to be charged—
 - is a New Zealand citizen; or
 - is ordinarily resident in New Zealand; or
 - has been found in New Zealand and has not been extradited; or
 - is a body corporate, or a corporation sole, incorporated under the law of New Zealand; or
- the offence occurred—
 - on board a ship registered or required to be registered under the Ship Registration Act 1992; or
 - on board a ship used as a ship of the New Zealand Defence Force; or
 - on board a New Zealand aircraft; or
 - on board an aircraft that is leased to a lessee whose principal place of business is in New Zealand, or who is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- the alleged victim—
 - is a New Zealand citizen; or
 - is ordinarily resident in New Zealand.

Also, the opportunity has been taken to remedy an inaccurate cross-reference in section 7A.

Clause 5 amends section 7B of the principal Act so as to require the Attorney-General's consent to a prosecution if extraterritorial jurisdiction is to be claimed over a person charged with an offence against new *section 98AA*.

Also, the opportunity has been taken to remedy an inaccurate cross-reference in section 7.

Clause 6 inserts into the principal Act a *new section 98AA*, which creates a number of new offences relating to the exploitation of people under 18 for sexual purposes, the removal of body parts, or forced labour.

Under the amendments, it becomes an offence—

- to sell, buy, transfer, barter, rent, hire, or otherwise deal with a person under 18 for any of these exploitative purposes:
- to engage a person under 18 in forced labour:
- to permit a person under the age of 18 years to be engaged in forced labour:
- to detain, confine, imprison, or carry away a person under 18 for any of these exploitative purposes:
- to remove, receive, transport, import, or bring into any place a person under 18 for the purpose of sexual exploitation or forced labour:
- to induce a person under 18 to sell, rent, or give himself or herself for the purpose of sexual exploitation or forced labour:
- induce a person to sell, rent, or give for any of these exploitative purposes a person under 18 who is dependent on him or her, or in his or her charge:
- provide, acquire, use, or help in the use of a ship, aircraft, or other vehicle for the purpose of doing any of those things:
- being a parent or guardian of a person under 18, to deliver him or her to another person for the purpose of sexual exploitation or forced labour:
- to agree or offer to do any of those things.

The new section does not limit the general effect of section 98 of the principal Act, which relates to slavery and similar offences.

Clause 7 replaces sections 127 to 142 of the principal Act, which relate to certain sexual offences, with new sections 127 to 138.

New section 127 replaces the present section 127, which—

- defines when sexual intercourse is complete; and
- provides that there is no presumption of law that a person is because of his age incapable of sexual intercourse because of his age.

The term “sexual intercourse” will, in the new sections and in certain other provisions of the principal Act, be replaced by the broader term “sexual connection”. A definition of it is therefore to be inserted in section 2(1) of the principal Act by *clause 3(1)*.

So *new section 127* provides only that there is no presumption of law that a male is, because of his age, incapable of penetrating the genitalia or anus of another person with his penis.

New section 128 is to the same effect as existing section 128 of the principal Act, but the language is slightly updated to reflect the language of the other sections being inserted.

New section 128A replaces the present section 128A of the principal Act, which states various matters that do not amount to consent to sexual connection.

At present—

- a person does not consent to sexual connection just because he or she does not protest or offer physical resistance;
- a person does not consent to sexual connection if he or she allows the connection because of—
 - the actual or threatened application of force to him or her or some other person; or
 - the fear of the application of force to him or her or some other person; or
 - a mistake about who the other person concerned is; or
 - a mistake about the nature and quality of the act concerned.

The new section contains additional subsections, providing that a person does not consent to sexual connection—

- if the connection occurs while he or she is asleep or unconscious; or
- if he or she is so affected by alcohol or some other drug that he or she cannot consent or refuse to consent to sexual connection; or

- if he or she is affected by an intellectual, mental, or physical condition or impairment so severe that he or she cannot consent or refuse to consent to sexual connection.

New section 128B is to the same effect as the present section. It provides that—

- people convicted of sexual violation are liable to imprisonment for up to 20 years:
- a person convicted of sexual violation must be sentenced to imprisonment unless, having regard to the particular circumstances of the offence or of the offender, including the nature of the conduct constituting the offence, the Court thinks that the person should not be sentenced to imprisonment.

New section 129 is to the same effect as the present section. It provides that a person who attempts to commit sexual violation or assaults another person with intent to commit sexual violation is liable to imprisonment for up to 10 years.

New section 129A extends the effect of section 129A of the principal Act, under which it is an offence (punishable by imprisonment for up to 14 years) to have sexual connection with another person knowing that the other person has been induced to consent to the connection by—

- a threat that somebody will commit an offence punishable by imprisonment that does not involve the actual or threatened application of force; or
- a threat that somebody will make an accusation or disclosure (whether true or false) of misconduct by some other person that is likely to damage seriously the other person's reputation; or
- a threat that the person making the threat will make improper use of a power or authority arising out of—
 - an occupational or vocational position he or she holds; or
 - a commercial relationship existing between the them.

It will now also be an offence (punishable by imprisonment for up to 5 years) to do an indecent act on another person knowing that the other person has been induced to consent to the act by a threat of that kind.

New section 130 extends the effect of section 130 of the principal Act, under which it is an offence (punishable by imprisonment for up to 10 years) to commit incest. At present, incest is defined as sexual intercourse between parent and child, siblings, half-siblings, or grandparent and grandchild. Under the new section, it will now extend to sexual connection of any kind between such people.

New sections 131 and 131A replace the present section 131 of the principal Act. The present section makes it an offence for a man to have or attempt to have sexual intercourse with a girl under 20 years and who—

- is his step-daughter, foster daughter, or ward, and is living with him as a member of his family; or
- is not his step-daughter, foster daughter, or ward, and is not living with him as his wife, but—
 - is living with him as a member of his family; and
 - is under his care or protection.

New section 131—

- makes it an offence (punishable by imprisonment for up to 7 years) for a person, whether male or female, to have or attempt to have sexual connection with a family member under 18 with consent by the use of a power or authority arising out of the relationship between them; and
- makes it an offence (punishable by imprisonment for up to 3 years) for a person, whether male or female, to do an indecent act on a family member under 18 or on a child of the person who is under 18 with consent by the use of a power or authority arising out of the relationship between them.

New section 131A states for the purposes of *section 131* the circumstances in which a person has sexual connection with, or does an indecent act on, a family member under 18. These are when—

- he or she and another person who is under 18 either have a close family relationship or are living together in the same household; and
- he or she has sexual connection with or does an indecent act on the other person with the other person's consent; but
- he or she knows that the other person consented because of his or her use of a power or authority arising out of the relationship between them.

And 2 people have a close family relationship if—

- one of them is a parent, step-parent, foster parent, guardian, sibling, half-sibling, step-sibling, uncle, aunt, or grandparent of the other; or
- one of them is the partner of a parent, foster parent, guardian, sibling, half-sibling, step-sibling, uncle, aunt, or grandparent of the other; or
- one of them is the parent or step-parent of a parent, foster parent, or guardian, of the other; or
- they are members of the same family, whanau, or other culturally recognised family group, and one of them has a responsibility for or significant role in the care or upbringing of the other.

New section 132 replaces the present sections 132, 133, and 140 of the principal Act.

Under the present section 132,—

- it is an offence (punishable by imprisonment for up to 14 years) to have sexual intercourse with a girl under 12; and
- it is an offence (punishable by imprisonment for up to 10 years) to attempt to have sexual intercourse with a girl under 12.

Under the present section 133, it is an offence (punishable by imprisonment for up to 10 years) for a male—

- to indecently assault a girl under 12; or
- to do an indecent act on a girl under 12.

Under the present section 140, it is an offence (punishable by imprisonment for up to 10 years) for a male—

- to indecently assault a boy under 12; or
- to do an indecent act on a boy under 12.

The new section also replaces some elements of the present section 142 of the principal Act, which relates to anal intercourse with a person under 16.

The *new section 132* is extended so that—

- it now applies to any kind of sexual connection rather than just sexual intercourse; and
- it now applies no matter what the sex of the 2 people involved.

New section 134 replaces the present sections 134 and 140A of the principal Act.

Under the present section 134, it is an offence (punishable by imprisonment for up to 7 years)—

- to have sexual intercourse with a girl between 12 and 16; or
- to indecently assault a girl between 12 and 16; or
- to do an indecent act on a girl between 12 and 16.

Under the present section 140A, it is an offence (punishable by imprisonment for up to 7 years)—

- to indecently assault a boy between 12 and 16; or
- to do an indecent act on a boy between 12 and 16.

The new section also replaces some elements of the present section 142 of the principal Act, which relates to anal intercourse with a person under 16.

The *new section 134* is extended so that—

- it now applies to any kind of sexual connection rather than just sexual intercourse (with the maximum penalty increased from 7 years imprisonment to 10 years imprisonment); and
- it now applies no matter what the sex of the 2 people involved.

In addition there is a change to the defences available to a person charged with an offence against sections 134 and 140A.

At present, it is a defence if the person charged proves that the girl or boy concerned consented and that—

- he or she is younger than her; or
- he was under 21 years at the time, and had reasonable cause to believe (and did believe) that he or she was 16 or older.

These defences are no longer to be available.

New section 134A instead provides that it will be a defence if the person charged proves that the other person concerned consented and that—

- the person charged is—
 - of or under the age of the other person; or
 - older than the other person by no more than 2 years; or
- the person charged—

- took reasonable steps to find out whether the other person was over 16; and
- believed on reasonable grounds that the other person was over was of or over that age.

New section 135 replaces sections 135 and 141 of the principal Act.

At present,—

- section 135 of the principal Act makes the indecent assault of a woman or girl over 16 an offence punishable by imprisonment for up to 7 years.
- section 141 of the principal Act makes the indecent assault by a male of a man or boy over 16 an offence punishable by imprisonment for up to 7 years.

The new section makes the indecent assault of a person of any sex by a person of any sex an offence punishable by imprisonment for up to 7 years.

New section 137 is an extension of the present section. At present, section 137 of the principal Act makes it an offence (punishable by imprisonment for up to 7 years) for a male to induce a woman or girl to have sexual intercourse with him by a wilfully false representation that they are married. The new section makes it an offence (punishable by imprisonment for up to 7 years) for a person of either sex to have sexual connection with another person with consent obtained by falsely representing that they are married to each other.

New section 138 replaces, with substantially modified effects, the present section 138 of the principal Act. It also replaces some elements of the present section 142 of the principal Act, which relates to anal intercourse with a person who is “severely subnormal”.

At present, section 138 of the principal Act makes it an offence (punishable by imprisonment for up to 7 years) for a male to have or attempt to have sexual intercourse with a “severely subnormal” woman or girl, if he knows or has good reason to believe that she is severely subnormal.

The new section is based on the concept of a **significant impairment**. This is defined as an intellectual, mental, or physical condition or impairment (or a combination of 2 or more intellectual, mental, or physical conditions or impairments) that affects a person to such an extent that it significantly impairs the person’s capacity—

- to understand the nature of decisions about sexual conduct; or

- to foresee the consequences of decisions about sexual conduct; or
- to communicate decisions about sexual conduct.

It becomes an offence (punishable by imprisonment for up to 10 years) to have or attempt to have sexual connection with a person with a significant impairment with consent obtained by taking advantage of the impairment.

It also becomes an offence (also punishable by imprisonment for up to 10 years) to do an indecent act on a person with a significant impairment with consent obtained by taking advantage of the impairment.

Clause 8 replaces section 144A of the principal Act, which makes it an offence for a person who is a New Zealand citizen or is ordinarily resident in New Zealand to do outside New Zealand an act with a child that would, if done in New Zealand, be an offence against any of several stated provisions of the principal Act.

The new section differs in 2 respects—

- it lists the various new provisions of the principal Act that are to be substituted by this Bill; and
- it also lists certain offence provisions of the Prostitution Reform Act 2003.

The Prostitution Reform Act 2003 offences will apply to acts done in relation to a person under 18 (rather than the offences at present stated in section 144A, which relate to children under 12 or 16).

Clause 9 replaces section 208 of the principal Act, which makes it an offence (punishable by imprisonment for up to 14 years) to abduct or detain a woman or girl with intent to marry her or have sexual intercourse with her, or to cause her to be married to or to have sexual intercourse with some other person.

The new section 208 makes it an offence (punishable by imprisonment for up to 14 years) to abduct or detain any person with intent to marry him or her or have sexual connection with him or her, or to cause him or her to be married to or to have sexual connection with some other person.

Clause 10 amends section 210(1) of the principal Act, which makes it an offence (punishable by imprisonment for up to 7 years)—

- to take or entice away, or detain a girl under 16 with intent to have sexual intercourse with her, or

- receive a girl under 16 who has been taken or enticed away, or detained, with intent to have sexual intercourse with her.

The amendment has the effect the offence now relates to sexual connection rather than sexual intercourse, and can be committed in respect of a male or female under 16.

Part 2

Amendments, repeals, and transitional matters

Clause 11 makes consequential amendments.

Clause 12 effects consequential repeals.

Clause 13 makes clear that offences allegedly committed before the Bill's commencement will be dealt with as if the Bill had not been enacted.

Clause 14 is an exception to *clause 13*, and enables people charged with an offence against a provision repealed and replaced by the Bill to have the benefit of both—

- all new defences available in respect of the replacement provision; and
- all defences available in respect of the repealed provision.

Regulatory impact statement

Statement of the nature and magnitude of the problem and the need for government action

The current law relating to sex offences fails to reflect some recent changes in our understanding of, as well as our values and attitudes relating to, sexual relationships in New Zealand society.

The law, for example, does not provide redress for male victims or enable prosecutions of females of behaviours that, had they been committed by a male, would have constituted a criminal offence. Many of the offences also focus on sexual intercourse only, rather than on unlawful sexual connection. This ignores the fact that in the eyes of the victims these other penetrative sexual assaults are also very grave.

The current law also imposes some procedural difficulties resulting in unjust outcomes. For example, the current age bound offences affecting young people aged under 12 or between 12 years and under 16 years, pose difficulties in prosecution where offending either straddles the two age categories or where it is not clear how old the

victim was at the time of the offences. Even if alternative charges have been laid, if the evidence supporting the victim's age specified in the indictment is unclear the accused may be discharged or acquitted of the charges, even though it is clear that the offending took place. There are also time limits imposed on prosecuting some offences but not others, which is anomalous and unjustified.

It is believed that some consent issues surrounding drug rape and sexual connection with persons incapable of truly consenting because of their severe disabilities need to be articulated in statute in order to provide clarity and certainty.

It is also recognised that children need further protection from sexual abuse from members of the wider family, rather than just the head of the household as the current provisions provide.

Finally, it is considered that a revised offence is necessary to provide redress for persons who are vulnerable because of the nature of their mental health condition and/or because of the extent of their physical and/or intellectual impairments in situations where a person know they are vulnerable and exploit it.

Statement of the public policy objective(s)

The aim of the criminal law in the area of sex offences is to recognise and encourage respect for the sexual integrity and personal autonomy of all members of the community. The law can help achieve this in particular by:

- reinforcing that people are entitled to enjoy a fulfilling sexual life with other persons of their choice, irrespective of their sex:
- providing that no person should be forced to submit to a sexual act to which he or she does not consent:
- providing special coverage for some groups that are vulnerable to exploitation, such as children and young people, persons who are particularly vulnerable due to the nature of their mental health conditions and/or physical, and/or intellectual impairments, and certain dependent family members:
- ensuring that persons who sexually abuse others are liable to prosecution and sentence according to their culpability.

***Statement of feasible options (regulatory and/or non-regulatory)
that may constitute viable means for achieving the desired
objective(s)***

Status quo

It is not satisfactory to continue with the status quo. There is increased awareness of the inequity of young males not being able to seek redress in situations where female victims can. The age bound offences and the time limits also bring about unjust outcomes.

Preferred option

The current sexual crimes are outlined in the Crimes Act 1961. The provisions must be amended to achieve the objectives of the proposal.

***Statement of the net benefit of the proposal, including the total
regulatory costs (administrative, compliance and economic costs)
and benefits (including non-quantifiable benefits) of the
proposal, and other feasible options***

The key benefit to government associated with this proposal is that it will assist in developing a safer social environment for persons vulnerable to sex abuse, and secure more just outcomes. It will also mean that New Zealand's criminal law will better reflect recent changes in criminal behaviour and changes in social attitudes towards sexual matters. It will also be more consistent, easier to understand and apply.

The proposals will increase the number of prosecutions relating to sexual crimes, and will affect the operations of the Police, the Ministry of Justice, the Department of Corrections, the Crown Law Office, and the Legal Services Agency.

For individuals, the revised regime will also ensure that all victims of sexual abuse will be able to seek redress for a wider range of offending, regardless of their sex, and the sex of the offender.

Statement of consultation undertaken

The following government agencies were consulted: Accident Compensation Corporation, Child, Youth & Family, Department of Corrections, Department for Courts (before it was recombined with the Ministry of Justice), Crown Law Office, Ministry of Health, Inland Revenue Department, Department of Labour, Office for Disability

Issues, Ministry of Pacific Island Affairs, NZ Police, Department of Prime Minister and Cabinet, Ministry of Social Development, State Services Commission, Te Puni Kōkiri, Treasury, Ministry of Women's Affairs, and Ministry of Youth Affairs.

A consultation document was referred to most of the above agencies, and to the following interested persons or agencies in April 2002: the Chief Justice and the Chief District Court Judge, the Law Commission, the Commissioner for Children, the Health and Disability Commissioner, New Zealand Law Society (Criminal Law Committee), IHC, the Donald Beasley Institute, Dunedin (researchers on intellectual disability), the Aids Foundation, Doctors for Sexual Abuse Care, the following academic commentators: Associate Professor Warren Brookbanks, Auckland University; Professor Gerry Orchard and Associate Professor Jeremy Finn, both at Canterbury University; Kevin Dawkins, Otago University; and Neil Cameron, Victoria University. Proposals relating to drug rape were forwarded to Dianne Yates MP and the NZ Drug Rape Trust.

Other

The policy proposal does not impose compliance cost on businesses.

Hon Phil Goff

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Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Crimes Amendment Act (No 2) 2003.
- (2) In this Act, the Crimes Act 1961¹ is called “the principal Act”.

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¹ 1961 No 43**2 Commencement**

- (1) **Sections 6 and 8** come into force on a date appointed by the Governor-General by Order in Council.
- (2) So much of **Schedule 1** as relates to the Extradition Act 1999 or the Mutual Assistance in Criminal Matters Act 1992 comes into force on a date appointed by the Governor-General by Order in Council.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

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Part 1**Amendments to principal Act**

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3 Interpretation

- (1) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:
- “for a material benefit, in relation to doing a thing, means—
- “(a) after having obtained a material benefit for doing the thing; or
- “(b) intending to obtain a material benefit for doing the thing
- “sexual connection means—
- “(a) connection effected by the introduction into the genitalia or anus of one person, otherwise than for genuine medical purposes, of—
- “(i) a part of the body of another person; or
- “(ii) an object held or manipulated by another person; or
- “(b) connection between the mouth or tongue of one person and a part of another person’s genitalia or anus; or
- “(c) the continuation of connection of a kind described in paragraph (a) or paragraph (b)”.
- (2) Section 2 of the principal Act is amended by inserting, after subsection (1), the following subsection:

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- “(1A) For the purposes of this Act one person does an indecent act on another person whether he or she—
 “(a) does an indecent act with or on the other person; or
 “(b) induces or permits the other person to do an indecent act with or on him or her.” 5
- (3) Section 98B of the principal Act is consequentially repealed by repealing the definition of **for a material benefit**.
- 4 Extraterritorial jurisdiction in respect of certain offences with transnational aspects**
- Section 7A(1) of the principal Act is amended— 10
- (a) by inserting, before the expression “section 98A”, the expression “**section 98AA,**”;and
 (b) by omitting the expression “section 257A”, and substituting the expression “section 243”.
- 5 Attorney-General’s consent when jurisdiction claimed under section 7A** 15
- Section 7B of the principal Act is amended—
- (a) by inserting in subsection (1) and subsection (2), before the expression “section 98A”, the expression “**section 98AA,**”;and 20
 (b) by omitting from subsection (1) and subsection (2) the expression “section 257A”, and substituting in each case the expression “section 243”.
- 6 New section 98AA inserted**
- The principal Act is amended by inserting, after section 98, the following section: 25
- “**98AA Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour**
- “(1) Every one is liable to imprisonment for a term not exceeding 14 years who— 30
- “(a) sells, buys, transfers, barter, rents, hires, or in any other way enters into a dealing involving a person under the age of 18 years for the purpose of—
- “(i) the sexual exploitation of the person; or
 “(ii) the removal of body parts from the person; or 35
 “(iii) the engagement of the person in forced labour; or
- “(b) engages a person under the age of 18 years in forced labour; or

- “(c) permits a person under the age of 18 years to be engaged in forced labour; or
- “(d) detains, confines, imprisons, or carries away a person under the age of 18 years for the purpose of—
- “(i) the sexual exploitation of the person; or 5
- “(ii) the removal of body parts from the person; or
- “(iii) the engagement of the person in forced labour; or
- “(e) removes, receives, transports, imports, or brings into any place a person under the age of 18 years for the purpose of— 10
- “(i) the sexual exploitation of the person; or
- “(ii) the removal of body parts from the person for a material benefit; or
- “(iii) the engagement of the person in forced labour; or
- “(f) induces a person under the age of 18 years to sell, rent, or give himself or herself for the purpose of— 15
- “(i) the sexual exploitation of the person; or
- “(ii) the removal of body parts from the person for a material benefit; or
- “(iii) the engagement of the person in forced labour; or 20
- “(g) induces a person to sell, rent, or give another person (being a person who is under the age of 18 years and who is dependent on him or her or in his or her charge) for the purpose of—
- “(i) the sexual exploitation of the other person; or 25
- “(ii) the removal of body parts from the other person; or
- “(iii) the engagement of the other person in forced labour; or
- “(h) builds, fits out, sells, buys, transfers, rents, hires, uses, provides with personnel, navigates, or serves on board a ship, aircraft, or other vehicle for the purpose of doing an act stated in any of **paragraphs (a) to (g)**; or 30
- “(i) agrees or offers to do an act stated in any of **paragraphs (a) to (h)**. 35
- “(2) For the purposes of **subsection (1), sexual exploitation**, in relation to a person, includes—
- “(a) the taking by any means, or transmission by any means, of still or moving images of the person engaged in explicit sexual activities (whether real or simulated); 40
- and

- “(b) the taking by any means or transmission by any means, for a material benefit, of still or moving images of the person’s sexual organs, anus, or breasts; and
- “(c) the person’s participation in a performance or display that— 5
- “(i) is undertaken for a material benefit; and
- “(ii) involves the exposure of the person’s sexual organs, anus, or breasts.
- “(3) This section does not limit or affect the generality of section 98.” 10
- 7 New sections 127 to 138 substituted**
- The principal Act is amended by repealing sections 127 to 142, and substituting the following sections:
- “127 No presumption because of age**
- There is no presumption of law that a male is, because of his age, incapable of penetrating the genitalia or anus of another person with his penis. 15
- “128 Sexual violation**
- “(1) Sexual violation is— 20
- “(a) the act of a male who rapes a female; or
- “(b) the act of a person who has unlawful sexual connection with another person.
- “(2) One person rapes another person if—
- “(a) he is male and the other person is female; and
- “(b) he has sexual connection with her, effected by the introduction of his penis into her genitalia,— 25
- “(i) without her consent to the connection; and
- “(ii) without believing on reasonable grounds that she consents to the connection.
- “(3) One person has unlawful sexual connection with another person if he or she has sexual connection with the other person— 30
- “(a) without the other person’s consent to the connection; and
- “(b) without believing on reasonable grounds that the other person consents to the connection. 35
- “(4) One person may be convicted of the sexual violation of another person at a time when they were married to each other.

“128A Allowing or agreeing to sexual connection does not amount to consent in some circumstances

- “(1) A person does not consent to sexual connection just because he or she does not protest or offer physical resistance to the connection. 5
- “(2) A person does not consent to sexual connection if he or she allows the connection because of—
- “(a) force applied to him or her or some other person; or
- “(b) the threat (express or implied) of the application of force to him or her or some other person; or 10
- “(c) the fear of the application of force to him or her or some other person.
- “(3) A person does not consent to sexual connection if the connection occurs while he or she is asleep or unconscious.
- “(4) A person does not consent to sexual connection if he or she submits to or acquiesces in sexual connection while so affected by alcohol or some other drug that he or she cannot consent or refuse to consent to sexual connection. 15
- “(5) A person does not consent to sexual connection if he or she submits to or acquiesces in sexual connection while affected by an intellectual, mental, or physical condition or impairment so severe that he or she cannot consent or refuse to consent to sexual connection. 20
- “(6) One person does not consent to sexual connection with another person if he or she agrees to the connection because he or she is mistaken about who the other person is. 25
- “(7) A person does not consent to an act of sexual connection if he or she agrees to the act because he or she is mistaken about its nature and quality.
- “(8) This section does not limit the circumstances in which a person does not consent to sexual connection. 30

“128B Penalty for sexual violation

- “(1) Every one who commits sexual violation is liable to imprisonment for a term not exceeding 20 years.
- “(2) A person convicted of sexual violation must be sentenced to imprisonment unless, having regard to the matters stated in **subsection (3)**, the court thinks that the person should not be sentenced to imprisonment. 35

- “(3) The matters are—
- “(a) the particular circumstances of the person convicted; and
 - “(b) the particular circumstances of the offence, including the nature of the conduct constituting it. 5
- “129 **Attempted sexual violation and assault with intent to commit sexual violation**
- “(1) Every one who attempts to commit sexual violation is liable to imprisonment for a term not exceeding 10 years.
- “(2) Every one who assaults another person with intent to commit sexual violation is liable to imprisonment for a term not exceeding 10 years. 10
- “129A **Sexual conduct with consent induced by certain threats**
- “(1) Every one who has sexual connection with another person knowing that the other person has been induced to consent to the connection by threat is liable to imprisonment for a term not exceeding 14 years. 15
- “(2) Every one who does an indecent act on another person knowing that the other person has been induced to consent to the act by threat is liable to imprisonment for a term not exceeding 5 years. 20
- “(3) For the purposes of **subsection (1)**, a person who has sexual connection with another person knows that the other person has been induced to consent to the sexual connection by threat if (and only if) he or she knows that the other person has been induced to consent to the sexual connection by an express or implied threat of a kind described in **subsection (5)**. 25
- “(4) For the purposes of **subsection (2)**,—
- “(a) a person who does an indecent act on another person knows that the other person has been induced to consent to the act by threat if (and only if) he or she knows that the other person has been induced to consent to the act by an express or implied threat of a kind described in **subsection (5)**; and 30
 - “(b) a person is induced to consent to an indecent act whether— 35
 - “(i) he or she is induced to consent to the doing of an indecent act with or on him or her; or

- “(ii) he or she is induced to consent to do an indecent act himself or herself.
- “(5) The kinds of threat referred to in **subsections (3) and (4)(a)** are—
- “(a) a threat that the person making the threat or some other person will commit an offence that— 5
- “(i) is punishable by imprisonment; but
- “(ii) does not involve the actual or threatened application of force to any person; and
- “(b) a threat that the person making the threat or some other person will make an accusation or disclosure (whether true or false) about misconduct by any person (whether living or dead) that is likely to damage seriously the reputation of the person against or about whom the accusation or disclosure is made; and 10
- “(c) a threat that the person making the threat will make improper use, to the detriment of the person consenting, of a power or authority arising out of— 15
- “(i) an occupational or vocational position held by the person making the threat; or
- “(ii) a commercial relationship existing between the person making the threat and the person consenting. 20
- “130 **Incest**
- “(1) Sexual connection is incest if—
- “(a) it is between 2 people whose relationship is that of parent and child, siblings, half-siblings, or grandparent and grandchild; and 25
- “(b) the person charged knows of the relationship.
- “(2) Every one of or over the age of 16 years who commits incest is liable to imprisonment for a term not exceeding 10 years. 30
- “131 **Sexual conduct with family member under 18 where consent given because of use of power or authority**
- “(1) Every one is liable to imprisonment for a term not exceeding 7 years who has sexual connection with a family member under the age of 18 years— 35
- “(a) with the family member’s consent; but
- “(b) knowing that the family member consented to the connection because of his or her use of a power or authority arising out of the relationship between them.

- “(2) Every one is liable to imprisonment for a term not exceeding 7 years who attempts to have sexual connection with a family member under the age of 18 years—
- “(a) with the family member’s consent; but
- “(b) knowing that the family member consented to the attempt because of his or her use of a power or authority arising out of the relationship between them. 5
- “(3) Every one is liable to imprisonment for a term not exceeding 3 years who does an indecent act on a family member under the age of 18 years— 10
- “(a) with the family member’s consent; but
- “(b) knowing that the family member consented to the act because of his or her use of a power or authority arising out of the relationship between them.
- “(4) The family member under the age of 18 years in respect of whom an offence against this section was committed cannot be charged as a party to the offence. 15

“131A **Family member defined**

- “(1) For the purposes of **section 131**, one person is a **family member** in relation to another person— 20
- “(a) if they are living together in the same household; or
- “(b) if—
- “(i) one of them is a parent, step-parent, foster parent, guardian, sibling, half-sibling, step-sibling, uncle, or aunt of the other; or 25
- “(ii) one of them is a parent, step-parent, or foster parent of a parent, step-parent, foster parent, or guardian, of the other; or
- “(iii) one of them is the partner of a person described in **subparagraph (i) or subparagraph (ii)**; or 30
- “(iv) they are members of the same family, whanau, or other culturally recognised family group, and one of them has a responsibility for, or significant role in the care or upbringing of, the other.
- “(2) In **subsection (1)(b)**,— 35
- “**aunt**, in relation to a person, includes a half-sister of one of the person’s parents
- “**guardian** means guardian by virtue of the Guardianship Act 1969 or the Children, Young Persons, and Their Families Act 1989 40

“**partner**, in relation to a person, means a person who—

“(a) is married to the person; or

“(b) lives with the person as a couple

“**uncle**, in relation to a person, includes a half-brother of one of the person’s parents.

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“132 **Sexual conduct with child under 12**

“(1) Every one who has sexual connection with a child is liable to imprisonment for a term not exceeding 14 years.

“(2) Every one who attempts to have sexual connection with a child is liable to imprisonment for a term not exceeding 10 years.

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“(3) Every one who does an indecent act on a child is liable to imprisonment for a term not exceeding 10 years.

“(4) It is not a defence to a charge under this section that the person charged believed that the child was of or over the age of 12 years.

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“(5) It is not a defence to a charge under this section that the child consented.

“(6) In this section,—

“(a) **child** means a person under the age of 12 years; and

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“(b) doing an indecent act on a child includes indecently assaulting the child.

“134 **Sexual conduct with young person under 16**

“(1) Every one who has sexual connection with a young person is liable to imprisonment for a term not exceeding 10 years.

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“(2) Every one who attempts to have sexual connection with a young person is liable to imprisonment for a term not exceeding 10 years.

“(3) Every one who does an indecent act on a young person is liable to imprisonment for a term not exceeding 7 years.

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“(4) No person can be convicted of a charge under this section if he or she was married to the young person concerned at the time of the sexual connection or indecent act concerned.

“(5) The young person in respect of whom an offence against this section was committed cannot be charged as a party to the offence.

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- “(6) In this section,—
- “(a) **young person** means a person under the age of 16 years; and
- “(b) doing an indecent act on a young person includes indecently assaulting the young person. 5
- “134A **Defences to charge under section 134**
- “(1) It is a defence to a charge under **section 134** if the person charged proves that—
- “(a) he or she is—
- “(i) of or under the age of the young person concerned; or 10
- “(ii) older than the young person by no more than 2 years; and
- “(b) the young person consented.
- “(2) It is a defence to a charge under **section 134** if the person charged proves that,— 15
- “(a) before the time of the act concerned, he or she had taken reasonable steps to find out whether the young person concerned was of or over the age of 16 years; and
- “(b) at the time of the act concerned, he or she believed on reasonable grounds that the young person concerned was of or over the age of 16 years; and 20
- “(c) the young person consented.
- “(3) Proof of the facts referred to in **subsection (1) or subsection (2)** is not a defence to a charge under **section 134** if it is proved that the consent of the young person concerned was obtained by a false and fraudulent representation as to the nature and quality of the act concerned. 25
- “(4) **Subsection (3)** overrides **subsections (1) and (2)**.
- “(5) Except to the extent provided in **subsections (1) and (2)**, it is not a defence to a charge under **section 134** that the young person concerned consented. 30
- “(6) Except to the extent provided in **subsection (2)**, it is not a defence to a charge under **section 134** that the person charged believed that the young person concerned was of or over the age of 16 years. 35
- “(7) In this section, **young person** means a person under the age of 16 years.

“135 Indecent assault

“(1) Every one is liable to imprisonment for a term not exceeding 7 years who indecently assaults another person.

“(2) Every one is liable to imprisonment for a term not exceeding 7 years if—

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“(a) he or she does with or on another person, with the other person’s consent, an act that, but for that consent, would be an indecent assault; but

“(b) the consent is obtained by a false and fraudulent representation as to the nature and quality of the act.

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“137 Inducing sexual connection under pretence of marriage

Every one who has sexual connection with another person with consent obtained by falsely representing that they are married to each other is liable to imprisonment for a term not exceeding 7 years.

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“138 Sexual exploitation of person with significant impairment

“(1) Every one is liable to imprisonment for a term not exceeding 10 years who has exploitative sexual connection with a person with a significant impairment.

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“(2) Every one is liable to imprisonment for a term not exceeding 10 years who attempts to have exploitative sexual connection with a person with a significant impairment.

“(3) For the purposes of **subsections (1) and (2)**, a person has exploitative sexual connection with a person with a significant impairment (the **impaired person**) if—

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“(a) he or she knows that the impaired person is a person with a significant impairment; and

“(b) having obtained the impaired person’s consent to the connection by taking advantage of the impairment, he or she has sexual connection with the person.

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“(4) Every one is liable to imprisonment for a term not exceeding 10 years who exploitatively does an indecent act on a person with a significant impairment.

“(5) For the purposes of **subsection (4)**, a person exploitatively does an indecent act on a person with a significant impairment (the **impaired person**) if—

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- “(a) he or she knows that the impaired person is a person with a significant impairment; and
- “(b) having obtained the impaired person’s consent to the doing of the act on the impaired person by taking advantage of the impairment, does an indecent act on the person. 5
- “(6) For the purposes of this section, a **significant impairment** is an intellectual, mental, or physical condition or impairment (or a combination of 2 or more intellectual, mental, or physical conditions or impairments) that affects a person to such an extent that it significantly impairs the person’s capacity— 10
- “(a) to understand the nature of decisions about sexual conduct; or
- “(b) to foresee the consequences of decisions about sexual conduct; or 15
- “(c) to communicate decisions about sexual conduct.”
- 8 New section 144A substituted**
- The principal Act is amended by repealing section 144A, and substituting the following section:
- “144A **Sexual conduct with children and young people outside New Zealand** 20
- “(1) Every one commits an offence who, being a New Zealand citizen or ordinarily resident in New Zealand,—
- “(a) does outside New Zealand, with or on a child under the age of 12 years, an act to which **subsection (2)** applies; or 25
- “(b) does outside New Zealand, with or on a person under the age of 16 years, an act to which **subsection (3)** applies; or
- “(c) does outside New Zealand, with or on a person under the age of 18 years, an act to which **subsection (4)** applies. 30
- “(2) This subsection applies to an act that, if done in New Zealand, would be an offence against—
- “(a) **section 132(1)** (sexual connection with a child under 12); or
- “(b) **section 132(2)** (attempted sexual connection with a child under 12); or 35
- “(c) **section 132(3)** (doing an indecent act on a child under 12).
- “(3) This subsection applies to an act that, if done in New Zealand, would be an offence against— 40

- “(a) **section 134(1)** of this Act (sexual connection with a young person); or
- “(b) **section 134(2)** of this Act (attempted sexual connection with a young person); or
- “(c) **section 134(3)** of this Act (doing an indecent act on a young person). 5
- “(4) This subsection applies to an act that, if done in New Zealand, would be an offence against—
- “(a) section 20 of the Prostitution Reform Act 2003 (assisting a person under 18 years in providing commercial sexual services); or 10
- “(b) section 21 of the Prostitution Reform Act 2003 (receiving earnings from commercial sexual services provided by a person under 18 years); or
- “(c) section 22(1) of the Prostitution Reform Act 2003 (entering into a contract or other arrangement for the provision of commercial sexual services by a person under 18 years); or 15
- “(d) section 22(2) of the Prostitution Reform Act 2003 (receiving commercial sexual services from a person under 18 years). 20
- “(5) A person who commits an offence against this section in respect of a provision specified in any of **subsections (2) to (4)** is liable to the penalty to which he or she would be liable if convicted of an offence against the provision. 25
- “(6) Every limiting provision that applied to a provision specified in any of **subsections (2) to (4)** when an offence against this section in respect of the provision specified is alleged to have been committed applies also to—
- “(a) the commencement of proceedings for the offence; and 30
- “(b) a charge under this section in respect of the provision specified.
- “(7) In this section, **limiting provision**, in relation to a provision specified in any of **subsections (2) to (4)**, means a provision of this Act or the Prostitution Reform Act 2003 that states (in relation to the provision specified only, or more generally)— 35
- “(a) circumstances that constitute a defence to a charge under the provision specified; or
- “(b) circumstances that do not constitute a defence to a charge under the provision specified; or 40

“(c) circumstances in which the person on or with whom an offence against the provision specified is committed may not be charged with an offence against that provision.”

- 9 New section 208 substituted** 5
 The principal Act is amended by repealing section 208, and substituting the following section:
- “208 Abduction for purposes of marriage or sexual connection**
 Every one is liable to imprisonment for a term not exceeding 10
 14 years who takes away or detains any person, whether married or not, without his or her consent or with his or her consent obtained by fraud or duress, with intent—
- “(a) to marry him or her or to have sexual connection with him or her; or 15
 “(b) to cause him or her to be married to or to have sexual connection with some other person.”
- 10 Abduction of child under 16**
 Section 210(1) of the principal Act is amended by omitting the words “intercourse with any child being a girl”, and substituting the words “connection with any child”. 20

Part 2

Amendments, repeals, and transitional matters

- 11 Consequential amendments** 25
 The enactments specified in **Schedule 1** are amended in the manner indicated in that schedule.
- 12 Consequential repeals**
 The enactments specified in **Schedule 3** are repealed.
- 13 Acts done before commencement of amending provisions**
 (1) Every provision of the principal Act amended or repealed by a section of this Act applies to an act or omission occurring before the commencement of that section as if the section had not been enacted. 30

(2) Every enactment amended or repealed by **section 11 or section 12** applies to an act or omission occurring before the commencement of those sections as if those sections had not been enacted.

(3) **Subsections (1) and (2)** are subject to **section 14**. 5

14 Availability of new defences

To the extent (if any) that, with or without modification, a provision of the principal Act substituted by a section of this Act replaces or corresponds to a provision of the principal Act repealed by that section, there are available to a person charged after the commencement of that section with an offence against the repealed provision, so far as they are applicable,— 10

- (a) all defences available to a person charged with an offence against the repealed provision; and 15
 - (b) with any necessary modifications, all defences available to a person charged with an offence against the substituted provision.
-

Schedule 1 Consequential amendments

s 11

Criminal Investigations (Blood Samples) Act 1995 (1995 No 55)

Omit from Part A of the Schedule the items relating to sections 128 to 142 of the Crimes Act 1961 and substitute: 5

128	Sexual violation	
129(1)	Attempted sexual violation	
129(2)	Assault with intent to commit sexual violation	
129A(1)	Inducing sexual connection by threat	10
129A(2)	Inducing indecent act by threat	
130	Incest	
131(1)	Sexual connection with family member under 18 where consent given because of use of power as authority	
131(2)	Attempted sexual connection with family member under 18 where consent given because of use of power as authority	15
131(3)	Indecent act with family member under 18 where consent given because of use of power as authority	
132(1)	Sexual connection with child under 12	
132(2)	Attempted sexual connection with child under 12	20
132(3)	Indecent act on child under 12	
134(1)	Sexual connection with young person under 16	
134(2)	Attempted sexual connection with young person under 16	
134(3)	Indecent act on young person under 16	
135(1)	Indecent assault	25
135(2)	Indecent act with consent obtained by false or fraudulent representation	
138(1)	Exploitative sexual connection with person with significant impairment	
138(2)	Attempted exploitative sexual connection with person with significant impairment	
138(4)	Exploitative indecent act with person with significant impairment	30

District Courts Act 1947 (1947 No 16)

Insert in section 28A, after the words “this Act”, the words “(including any offence against section 128 of the Crimes Act 1961 arising out of an act or omission occurring before 1 February 1986)”. 35

Omit from Part I of Schedule 1A the item relating to section 142 of the Crimes Act 1961.

Omit from Part II of Schedule 1A the item relating to section 132(1) of the Crimes Act 1961 and substitute:

132(1)	Sexual connection with child under 12	40
132(2)	Attempted sexual connection with child under 12	
132(3)	Indecent act on child under 12	

Extradition Act 1999 (1999 No 55)

Insert, after section 101B:

Extradition Act 1999 (1999 No 55)—continued**“101C Certain offences involving child pornography or child prostitution deemed to be included in extradition treaties**

- “(1) For the purposes of this Act and any Order in Council in force under section 15 or section 104,— 5
- “(a) every offence against **section 98AA** of the Crimes Act 1961 is deemed to be an offence described in any extradition treaty concluded before the commencement of **section 6 of the Crimes Amendment Act (No 2) 2003** and for the time being in force between New Zealand and any foreign country that is a party to the protocol referred to in **subsection (5)**; and 10
- “(b) every offence against **section 144A** of the Crimes Act 1961 is deemed to be an offence described in any extradition treaty concluded before the commencement of **section 8 of the Crimes Amendment Act (No 2) 2003** and for the time being in force between New Zealand and any foreign country that is a party to the protocol referred to in **subsection (5)**. 15
- “(2) A person whose surrender is sought from New Zealand in respect of an act that amounts to an offence deemed by **subsection (1)** to be an offence described in an extradition treaty is liable to be surrendered in accordance with this Act and the applicable extradition treaty, whether the act occurred before or after the relevant commencement referred to in **subsection (1)**. 20 25
- “(3) **Subsection (2)** does not apply in respect of an act that, had it occurred within the jurisdiction of New Zealand, would not, at the time that it occurred, have constituted an offence under New Zealand law. 30
- “(4) A certificate given and signed by the Minister of Foreign Affairs and Trade that a foreign country is a party to the protocol referred to in **subsection (5)** is, in the absence of proof to the contrary, sufficient evidence of that fact.
- “(5) The protocol to which this section applies is the Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography. 35

Extradition Act 1999 (1999 No 55)—continued

- “(6) For the purposes of this section **foreign country** includes a territory—
- “(a) for whose international relations the Government of a foreign country is responsible; and
- “(b) to which the extradition treaty and the Optional protocol extend.” 5

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)

Omit from Schedule 3 the items relating to sections 128 to 142 of the Crimes Act 1961 and substitute: 10

- | | | |
|---------|------------------------------------------------------------------------------------------------------------------|----|
| 128 | Sexual violation | |
| 129(1) | Attempted sexual violation | |
| 129(2) | Assault with intent to commit sexual violation | |
| 129A(1) | Inducing sexual connection by threat | |
| 129A(2) | Inducing indecent act by threat | 15 |
| 130 | Incest | |
| 131(1) | Sexual connection with family member under 18 where consent given because of use of power as authority | |
| 131(2) | Attempted sexual connection with family member under 18 where consent given because of use of power as authority | 20 |
| 131(3) | Indecent act with family member under 18 where consent given because of use of power as authority | |
| 132(1) | Sexual connection with child under 12 | |
| 132(2) | Attempted sexual connection with child under 12 | |
| 132(3) | Indecent act on child under 12 | 25 |
| 134(1) | Sexual connection with young person under 16 | |
| 134(2) | Attempted sexual connection with young person under 16 | |
| 134(3) | Indecent act on young person under 16 | |
| 135(1) | Indecent assault | |
| 135(2) | Indecent act with consent obtained by false or fraudulent representation | 30 |
| 138(1) | Exploitative sexual connection with person with significant impairment | |
| 138(2) | Attempted exploitative sexual connection with person with significant impairment | |
| 138(4) | Exploitative indecent act with person with significant impairment | |

Mutual Assistance in Criminal Matters Act 1992 (1992 No 48)

Insert in the Schedule, in its appropriate numerical order:

23	Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography	An offence against any of the following sections of the Crimes Act 1961	5
		section subject matter	
		98AA Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour	10
		144A Sexual conduct with children and young people outside New Zealand	15

Summary Proceedings Act 1957 (1957 No 87)

Omit from Part I of the First Schedule the items relating to sections 130 to 142 of the Crimes Act 1961 and substitute: 20

130	Incest		
131(1)	Sexual connection with family member under 18 where consent given because of use of power as authority		
131(2)	Attempted sexual connection with family member under 18 where consent given because of use of power as authority		25
131(3)	Indecent act with family member under 18 where consent given because of use of power as authority		
132(2)	Attempted sexual connection with child under 12		
132(3)	Indecent act on child under 12		30
134(1)	Sexual connection with young person under 16		
134(2)	Attempted sexual connection with young person under 16		
134(3)	Indecent act on young person under 16		
135(1)	Indecent assault		
135(2)	Indecent act with consent obtained by false or fraudulent representation		35
138(1)	Exploitative sexual connection with person with significant impairment		
138(2)	Attempted exploitative sexual connection with person with significant impairment		
138(4)	Exploitative indecent act with person with significant impairment		

Schedule 3 Consequential repeals

s 12

Age of Majority Act 1980 (1970 No 137) So much of the Schedule as relates to the principal Act.	5
Crimes Amendment Act 1969 (1969 No 82)	
Crimes Amendment Act (No 3) 1985 (1985 No 60) Section 2.	
Crimes Amendment Act (No 4) 1986 (1986 No 82)	
Crimes Amendment Act (No 3) 1993 (1993 No 62)	10
Crimes Amendment Act 1994 (1994 No 27) Section 2.	
Homosexual Law Reform Act 1986 (1986 No 33) Sections 3 to 5.	
Status of Children Act 1969 (1969 No 18) So much of the Schedule as relates to the principal Act.	15