

**Reprint
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Crimes Amendment Act 2005

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Crimes Amendment Act 2005.
- (2) In this Act, the Crimes Act 1961 is called “the principal Act”.

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 30th day after the date on which it receives the Royal assent.

Part 1 Amendments to principal Act

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

genitalia includes a surgically constructed or reconstructed organ analogous to naturally occurring male or female genitalia (whether the person concerned is male, female, or of indeterminate sex)

penis includes a surgically constructed or reconstructed organ analogous to a naturally occurring penis (whether the person concerned is male, female, or of indeterminate sex)

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 subsections:

- (1A) For the purposes of paragraph (a) of the definition in subsection (1) of **sexual connection**, introduction to the slightest degree is enough to effect a connection.

- (1B) 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.
- (3) Section 98B of the principal Act is consequentially amended by repealing the definition of **for a material benefit**.

4 Extraterritorial jurisdiction in respect of certain offences with transnational aspects

- (1) Section 7A(1) of the principal Act is amended—
- (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”.
- (2) Section 7A of the principal Act is amended by inserting, after subsection (2), the following subsection:
- (2A) Even if some or all of the acts alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for an offence against section 131B—
- (a) if the person to be charged—
 - (i) is a New Zealand citizen; or
 - (ii) is ordinarily resident in New Zealand; or
 - (iii) has been found in New Zealand and has not been extradited; or
 - (b) if any of the acts is alleged to have occurred—
 - (i) on board a ship registered or required to be registered under the Ship Registration Act 1992; or
 - (ii) on board a ship used as a ship of the New Zealand Defence Force; or
 - (iii) on board a New Zealand aircraft; or
 - (iv) 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
 - (c) if a person in respect of whom the offence is alleged to have been committed—
 - (i) is a New Zealand citizen; or
 - (ii) is ordinarily resident in New Zealand.

5 Attorney-General's consent when jurisdiction claimed under section 7A

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
- (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:

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—
 - (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
 - (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
 - (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—
 - (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—
 - (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
 - (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
 - (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
 - (i) agrees or offers to do an act stated in any of paragraphs (a) to (h).
- (2) It is a defence to a charge under this section if the person charged proves that he or she believed on reasonable grounds that the person under the age of 18 years concerned was of or over the age of 18 years.
- (3) For the purposes of subsection (1), **sexual exploitation**, in relation to a person, includes the following acts:
- (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);
 - (b) the taking by any means or transmission by any means, for a material benefit, of still or moving images of the person's genitalia, anus, or breasts (not being an act described in subsection (4) or subsection (5));
 - (c) the person's participation in a performance or display (not being an act described in subsection (4)) that—
 - (i) is undertaken for a material benefit; and
 - (ii) involves the exposure of the person's genitalia, anus, or breasts;
 - (d) the person's undertaking of an activity (for example, employment in a restaurant) that—
 - (i) is undertaken for a material benefit; and
 - (ii) involves the exposure of the person's genitalia, anus, or breasts.
- (4) For the purposes of paragraphs (b) and (c) of subsection (3), **sexual exploitation**, in relation to a person, does not include the recording or transmission of an artistic or cultural performance or display honestly undertaken primarily for purposes other than the exposure of body parts for the sexual gratification of viewers.
- (5) For the purposes of subsection (3)(b), **sexual exploitation**, in relation to a person, does not include the taking or transmission of images of the person's genitalia, anus, or breasts for the purpose of depicting a medical condition, or a sur-

- gical or medical technique, for the instruction or information of health professionals.
- (6) For the purposes of subsection (3)(b), **sexual exploitation**, in relation to a person, does not include the taking or transmission of images of the person's genitalia, anus, or breasts if the images are honestly intended—
- (a) to provide medical or health education; or
 - (b) to provide information relating to medical or health matters; or
 - (c) to advertise a product, instrument, or service intended to be used for medical or health purposes.
- (7) The person 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.
- (8) This section does not limit or affect the generality of section 98.

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 person is incapable of sexual connection because of his or her age.

128 Sexual violation defined

- (1) Sexual violation is the act of a person who—
- (a) rapes another person; or
 - (b) has unlawful sexual connection with another person.
- (2) Person A rapes person B if person A has sexual connection with person B, effected by the penetration of person B's genitalia by person A's penis,—
- (a) without person B's consent to the connection; and
 - (b) without believing on reasonable grounds that person B consents to the connection.
- (3) Person A has unlawful sexual connection with person B if person A has sexual connection with person B—
- (a) without person B's consent to the connection; and
 - (b) without believing on reasonable grounds that person B consents to the connection.
- (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 sexual activity does not amount to consent in some circumstances

- (1) A person does not consent to sexual activity just because he or she does not protest or offer physical resistance to the activity.
- (2) A person does not consent to sexual activity if he or she allows the activity 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
 - (c) the fear of the application of force to him or her or some other person.
- (3) A person does not consent to sexual activity if the activity occurs while he or she is asleep or unconscious.
- (4) A person does not consent to sexual activity if the activity occurs while he or she is so affected by alcohol or some other drug that he or she cannot consent or refuse to consent to the activity.
- (5) A person does not consent to sexual activity if the activity occurs while he or she is affected by an intellectual, mental, or physical condition or impairment of such a nature and degree that he or she cannot consent or refuse to consent to the activity.
- (6) One person does not consent to sexual activity with another person if he or she allows the sexual activity because he or she is mistaken about who the other person is.
- (7) A person does not consent to an act of sexual activity if he or she allows 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 activity.
- (9) For the purposes of this section,—

allows includes acquiesces in, submits to, participates in, and undertakes **sexual activity**, in relation to a person, means—

 - (a) sexual connection with the person; or
 - (b) the doing on the person of an indecent act that, without the person's consent, would be an indecent assault of the person.

128B 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.

- (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.

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 of the other person is liable to imprisonment for a term not exceeding 10 years.

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.
- (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.
- (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).
- (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
 - (b) a person is induced to consent to an indecent act whether—
 - (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—
 - (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
- (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—
 - (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.

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
 - (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.

131 Sexual conduct with dependent family member

- (1) Every one is liable to imprisonment for a term not exceeding 7 years who has sexual connection with a dependent family member under the age of 18 years.
- (2) Every one is liable to imprisonment for a term not exceeding 7 years who attempts to have sexual connection with a dependent family member under the age of 18 years.
- (3) Every one is liable to imprisonment for a term not exceeding 3 years who does an indecent act on a dependent family member under the age of 18 years.
- (4) The dependent family member cannot be charged as a party to the offence.
- (5) It is not a defence to a charge under this section that the dependent family member consented.

131A Dependent family member defined

- (1) For the purposes of section 131, one person is a dependent family member of another person—
 - (a) if the other person has power or authority over him or her, and is—
 - (i) his or her parent, step-parent, foster parent, guardian, uncle, or aunt; or

- (ii) a parent, step-parent, or foster parent of a person described in subparagraph (i); or
- (iii) a child of his or her parent or step-parent; or
- (iv) the spouse or de facto partner of a person described in subparagraph (i) or subparagraph (ii) or subparagraph (iii); or
- (b) if they are members of the same family, whanau, or other culturally recognised family group, and the other person—
 - (i) is not a person referred to in paragraph (a); but
 - (ii) has a responsibility for, or significant role in, his or her care or upbringing; or
- (c) if he or she is living with the other person as a member of the other person's family, and the other person is not a person referred to in paragraph (a), but has—
 - (i) power or authority over him or her; and
 - (ii) a responsibility for, or significant role in, his or her care or upbringing.

(2) In subsection (1),—

aunt, in relation to a person, includes a half-sister of one of the person's parents

foster parent includes a former foster parent

guardian—

(a) means guardian by virtue of the Guardianship Act 1968 or the Children, Young Persons, and Their Families Act 1989; and

(b) includes a former guardian

step-parent includes a former step-parent

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

131B Meeting young person under 16 following sexual grooming, etc

- (1) Every person is liable to imprisonment for a term not exceeding 7 years if,—
- (a) having met or communicated with a person under the age of 16 years (the **young person**) on an earlier occasion, he or she takes one of the following actions:
 - (i) intentionally meets the young person;
 - (ii) travels with the intention of meeting the young person;
 - (iii) arranges for or persuades the young person to travel with the intention of meeting him or her; and
 - (b) at the time of taking the action, he or she intends—

- (i) to take in respect of the young person an action that, if taken in New Zealand, would be an offence against this Part, or against any of paragraphs (a)(i), (d)(i), (e)(i), (f)(i), of section 98AA(1); or
 - (ii) that the young person should do on him or her an act the doing of which would, if he or she permitted it to be done in New Zealand, be an offence against this Part on his or her part.
- (2) It is a defence to a charge under subsection (1) if the person charged proves that,—
- (a) before the time he or she took the action concerned, he or she had taken reasonable steps to find out whether the young person was of or over the age of 16 years: and
 - (b) at the time he or she took the action concerned, he or she believed on reasonable grounds that the young person was of or over the age of 16 years.

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.
- (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.
- (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
 - (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.
- (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.
- (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 if the person who committed the offence was of or over the age of 16 years when the offence was committed.
- (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.

134A Defence to charge under section 134

- (1) It is a defence to a charge under section 134 if the person charged proves that,—
 - (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 was of or over the age of 16 years; and
 - (c) the young person consented.
- (2) Except to the extent provided in subsection (1),—
 - (a) it is not a defence to a charge under section 134 that the young person concerned consented; and
 - (b) 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.

135 Indecent assault

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

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.
- (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 he or she—
 - (a) has sexual connection with the impaired person knowing that the impaired person is a person with a significant impairment; and

- (b) has obtained the impaired person's acquiescence in, submission to, participation in, or undertaking of the connection by taking advantage of the impairment.
- (4) Every one is liable to imprisonment for a term not exceeding 5 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 he or she—
 - (a) does an indecent act on the impaired person knowing that the impaired person is a person with a significant impairment; and
 - (b) has obtained the impaired person's acquiescence in, submission to, participation in, or undertaking of the doing of the act by taking advantage of the impairment.
- (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—
 - (a) to understand the nature of sexual conduct; or
 - (b) to understand the nature of decisions about sexual conduct; or
 - (c) to foresee the consequences of decisions about sexual conduct; or
 - (d) 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

- (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
 - (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.
- (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
 - (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—
 - (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).
- (4) This subsection applies to an act that, if done in New Zealand, would be an offence against section 23(1) of the Prostitution Reform Act 2003 (breach of prohibitions on use in prostitution of persons under 18 years).
- (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.
- (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
 - (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)—
 - (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
 - (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 sections 208 to 210A substituted

The principal Act is amended by repealing sections 208 to 210, and substituting the following sections:

208 Abduction for purposes of marriage or sexual connection

Every one is liable to imprisonment for a term not exceeding 14 years who unlawfully takes away or detains a person without his or her consent or with his or her consent obtained by fraud or duress,—

- (a) with intent to marry him or her; or
- (b) with intent to have sexual connection with him or her; or

- (c) with intent to cause him or her to be married to or to have sexual connection with some other person.

Compare: 1908 No 32, s 226

209 Kidnapping

Every one is liable to imprisonment for a term not exceeding 14 years who unlawfully takes away or detains a person without his or her consent or with his or her consent obtained by fraud or duress,—

- (a) with intent to hold him or her for ransom or to service; or
(b) with intent to cause him or her to be confined or imprisoned; or
(c) with intent to cause him or her to be sent or taken out of New Zealand.

Compare: Criminal Code (1954), s 233 (Canada)

209A Young person under 16 cannot consent to being taken away or detained

For the purposes of sections 208 and 209, a person under the age of 16 years cannot consent to being taken away or detained.

210 Abduction of young person under 16

- (1) Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to deprive a parent or guardian or other person having the lawful care or charge of a young person of the possession of the young person, unlawfully takes or entices away or detains the young person.
- (2) Every one is liable to imprisonment for a term not exceeding 7 years who receives a young person, knowing that he or she has been unlawfully taken or enticed away or detained with intent to deprive a parent or guardian or other person having the lawful care or charge of him or her of the possession of him or her.
- (3) For the purposes of subsections (1) and (2),—
- (a) it is immaterial whether the young person consents, or is taken or goes or is received at his or her own suggestion; and
- (b) it is immaterial whether the offender believes the young person to be of or over the age of 16.
- (4) In this section **young person** means a person under the age of 16 years.

Compare: 1908 No 32, ss 229, 230; 1941 No 10, part Schedule; 1952 No 42, s 3

210A People claiming in good faith right to possession of young person under 16

A person who claims in good faith a right to the possession of a young person under the age of 16 years cannot be convicted of an offence against section 209 or section 210 because he or she gets possession of the young person.

Part 2

Amendments, repeals, and transitional matters

10 Consequential amendments

The enactments specified in Schedule 1 are amended in the manner indicated in that schedule.

11 Consequential repeals

The enactments specified in Schedule 2 are repealed.

12 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 the section as if the section had not been enacted.
- (2) Every enactment amended or repealed by section 10 or section 11 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 13, the District Courts Amendment Act (No 2) 2008, and the Summary Proceedings Amendment Act (No 2) 2008.

Section 12(3): amended, on 26 June 2008, by section 18(2) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

13 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,—

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

Schedule 1

Consequential amendments

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Armed Forces Discipline Act 1971 (1971 No 53)

Omit from section 131A(1)(a)(iv) the words “inducing sexual connection by coercion” and substitute the words “sexual connection with consent induced by certain threats”.

Bail Act 2000 (2000 No 38)

Repeal section 10(2)(a) and substitute:

(a) section 128B (sexual violation):

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

Omit from Part 1 of the Schedule the items relating to sections 128 to 142 of the Crimes Act 1961 and substitute:

Sexual violation	128B(1)
Attempted sexual violation	129(1)
Assault with intent to commit sexual violation	129(2)
Inducing sexual connection by threat	129A(1)
Inducing indecent act by threat	129A(2)
Incest	130(2)
Sexual connection with dependent family member	131(1)
Attempted sexual connection with dependent family member	131(2)
Indecent act with dependent family member	131(3)
Meeting young person under 16 following sexual grooming, etc	131B(1)
Sexual connection with child under 12	132(1)
Attempted sexual connection with child under 12	132(2)
Indecent act on child under 12	132(3)
Sexual connection with young person under 16	134(1)
Attempted sexual connection with young person under 16	134(2)
Indecent act on young person under 16	134(3)
Indecent assault	135
Exploitative sexual connection with person with significant impairment	138(1)
Attempted exploitative sexual connection with person with significant impairment	138(2)
Exploitative indecent act with person with significant impairment	138(4)

Omit from Part 1 of the Schedule the items relating to sections 208 and 209 of the Crimes Act 1961 and substitute:

Abduction for purposes of marriage or sexual connection	208
Kidnapping	209

Add to Part 1 of the Schedule after the item relating to section 242 of the Crimes Act:

	<i>Crimes Act 1961 (before commencement of Crimes Amendment Act 2005)</i>
Sexual violation	section 128
Attempt to commit sexual violation	section 129
Inducing sexual connection by coercion	section 129A
Incest	section 130
Sexual intercourse with girl under care or protection	section 131
Sexual intercourse with girl under 12	section 132(1)
Attempted sexual intercourse with girl under 12	section 132(2)
Indecency with girl under 12	section 133
Sexual intercourse with girl between 12 and 16	section 134(1)
Indecency with girl between 12 and 16	section 134(2)
Indecent assault on woman or girl	section 135
Sexual intercourse with severely subnormal woman or girl	section 138
Abduction of woman or girl	section 208
Abduction of child under 16	section 210

Omit from Part 2 of the Schedule the items relating to sections 137 and 139 of the Crimes Act 1961.

Omit from Part 2 of the Schedule the item relating to section 144A of the Crimes Act 1961 and substitute the following item:

Sexual conduct with children and young people outside New Zealand	section 144A
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Omit from Part 2 of the Schedule the item relating to section 210 of the Crimes Act 1961 and substitute the following item:

Abduction of young person under 16	section 210
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Insert in Part 2 of the Schedule after the item relating to section 302 of the Crimes Act 1961 the following items:

	<i>Crimes Act 1961 (before commencement of Crimes Amendment Act 2005)</i>
Inducing sexual intercourse under pretence of marriage	section 137
Indecent act between woman and girl	section 139
Sexual conduct with children outside New Zealand	section 144A
Abduction of child under 16	section 210

Criminal Records (Clean Slate) Act 2004 (2004 No 36)

Omit from section 4 the definition of **specified offence** and substitute:

specified offence means any of the following offences

- (a) an offence committed (whether before or after the commencement of the Crimes Amendment Act 2005) against any of the following provisions of the Crimes Act 1961:
 - (i) section 130 (incest):
 - (ii) section 131B(1) (meeting a young person under 16 following sexual grooming, etc):
 - (iii) section 144C (organising or promoting child sex tours):
 - (iv) section 204A (female genital mutilation):
 - (v) section 204B (further offences relating to female genital mutilation):
- (b) an offence committed after the commencement of the Crimes Amendment Act 2005 against any of the following provisions of the Crimes Act 1961:
 - (i) section 131 (sexual conduct with a dependent family member):
 - (ii) section 132 (sexual conduct with a child under 12):
 - (iii) section 134 (sexual conduct with a young person under 16):
 - (iv) section 138 (sexual exploitation of a person with a significant impairment):
 - (v) section 144A (sexual conduct with children and young people outside New Zealand):
- (c) an offence committed before the commencement of the Crimes Amendment Act 2005 against any of the following provisions of the Crimes Act 1961:
 - (i) section 131 (sexual intercourse with a girl under care or protection):
 - (ii) section 132 (sexual intercourse with a girl under 12):
 - (iii) section 133 (indecenty with a girl under 12):
 - (iv) section 134 (sexual intercourse or indecenty with a girl between 12 and 16):
 - (v) section 138 (sexual intercourse with a severely subnormal woman or girl):
 - (vi) section 139 (indecent act between a woman and a girl):
 - (vii) section 140 (indecenty with a boy under 12):
 - (viii) section 140A (indecenty with a boy between 12 and 16):
 - (ix) section 142 (anal intercourse):
 - (x) section 144A (sexual conduct with children outside New Zealand):
- (d) an offence against any of the following provisions of the Crimes Act 1908:
 - (i) section 153 (unnatural offence):

- (ii) section 154 (attempt to commit unnatural offence):
- (iii) section 155 (incest):
- (iv) section 208 (indecent assault):
- (v) section 211 (rape):
- (vi) section 213 (attempt to commit rape):
- (vii) section 214 (defiling children under 12):
- (viii) section 215 (attempting to defile a child under 12):
- (ix) section 216 (defiling girls between 12 and 16):
- (x) section 217 (defiling idiot or imbecile woman or girl):
- (xi) section 218 (procuring defilement of girls):
- (e) an attempt to commit an offence against a provision listed in any of paragraphs (a) to (d), if—
 - (i) the offence is not itself specified as an attempt; and
 - (ii) the provision does not provide that the offence may be completed on an attempt:
- (f) a conspiracy to commit an offence against a provision listed in any of paragraphs (a) to (d):
- (g) being an accessory after the fact in relation to an offence against a provision listed in any of paragraphs (a) to (d).

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)”.

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

Omit from Part 2 of Schedule 1A the items relating to sections 128 to 132(1) of the Crimes Act 1961 and substitute:

128B	Sexual violation
129(1)	Attempted sexual violation
129(2)	Assault with intent to commit sexual violation
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

Omit from Part 2 of Schedule 1A the item relating to section 208 of the Crimes Act 1961 and substitute:

208	Abduction for purposes of marriage or sexual connection
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Extradition Act 1999 (1999 No 55)

Omit from section 101A(2)(g) the expression “section 101B”, and substitute the words “sections 101B and 101C”.

Insert, after section 101B:

101C Certain offences involving trading in children 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,—
 - (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 10 of the Crimes Amendment Act 2005 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
 - (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 10 of the Crimes Amendment Act 2005 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
 - (c) every offence against section 23(1) of the Prostitution Reform Act 2003 is deemed to be an offence described in any extradition treaty concluded before the commencement of section 10 of the Crimes Amendment Act 2005 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
 - (d) every offence against section 27A of the Adoption Act 1955 is deemed to be an offence described in any extradition treaty concluded before the commencement of section 6 of the Adoption Amendment Act 2011 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).
- (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 commencement referred to in subsection (1)(a), (b), (c), or (d), as the case requires.
- (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.
- (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 adopted by the General Assembly of the United Nations at New York on 25 May 2000.
- (6) For the purposes of this section, a foreign country includes a territory if—
- (a) the foreign country's government is responsible for the territory's international relations; and
 - (b) an extradition treaty is in force between New Zealand and the foreign country; and
 - (c) the protocol referred to in subsection (5) extends to the territory.

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:

128B(1)	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
130	Incest
131(1)	Sexual connection with dependent family member
131(2)	Attempted sexual connection with dependent family member
131(3)	Indecent act with dependent family member
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
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	Indecent assault
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:

29	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	
		section 98AA	subject matter Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour
		144A	Sexual conduct with children and young people outside New Zealand
		An offence against the following section of the Prostitution Reform Act 2003	
		section 23(1)	subject matter Breach of prohibitions on use in prostitution of people under 18

Parole Act 2002 (2002 No 10)

Repeal section 107B(2) and substitute:

- (2) An offence against any of the following sections of the Crimes Act 1961 is a relevant offence:
- (a) section 128B (sexual violation), but only if the victim of the offence was under the age of 16 at the time of the offence:
 - (b) section 129(1) (attempt to commit sexual violation), but only if the victim of the offence was under the age of 16 at the time of the offence:
 - (c) section 129(2) (assault with intent to commit sexual violation), but only if the victim of the offence was under the age of 16 at the time of the offence:
 - (d) section 129A (sexual conduct with consent induced by certain threats), but only if the victim of the offence was under the age of 16 at the time of the offence:

- (e) section 130(2) (incest), but only if the victim of the offence was under the age of 16 at the time of the offence:
 - (f) section 131(1) (sexual connection with dependent family member under 18), but only if the victim of the offence was under the age of 16 at the time of the offence:
 - (g) section 131(2) (attempted sexual connection with dependent family member under 18), but only if the victim of the offence was under the age of 16 at the time of the offence:
 - (h) section 131(3) (indecent act on dependent family member under 18), but only if the victim of the offence was under the age of 16 at the time of the offence:
 - (i) section 131B(1) (meeting young person under 16 following sexual grooming, etc):
 - (j) section 132(1) (sexual connection with child under 12):
 - (k) section 132(2) (attempted sexual connection with child under 12):
 - (l) section 132(3) (indecent act on child under 12):
 - (m) section 134(1) (sexual connection with young person under 16):
 - (n) section 134(2) (attempted sexual connection with young person under 16):
 - (o) section 134(3) (indecent act on young person under 16):
 - (p) section 138(1) (exploitative sexual connection with person with significant impairment):
 - (q) section 138(2) (attempted exploitative sexual connection with person with significant impairment):
 - (r) section 138(4) (indecent act on person with significant impairment):
 - (s) section 139 (indecent act between woman and girl):
 - (t) section 140 (indecency with boy under 12):
 - (u) section 140A (indecency with boy between 12 and 16):
 - (v) section 142 (anal intercourse):
 - (w) section 144A (sexual conduct with children and young people outside New Zealand):
 - (x) section 144C (organising or promoting child sex tours):
 - (y) section 208 (abduction for purposes of marriage or sexual connection), but only if the offence involved a young person under the age of 16 and an intention to have sexual connection with the person:
 - (z) section 210 (abduction of young person under 16), but only if the offence involved an intention to have sexual connection with the person.
- (2A) An offence is also a relevant offence if—

- (a) it is equivalent to an offence against any of the sections of the Crimes Act 1961 referred to in subsection (2); but
 - (b) was committed against a provision of the Crimes Act 1961 that has been repealed.
- (2B) For the purposes of subsection (2A),—
- (a) an offence against the former section 133 of the Crimes Act 1961 (indecenty with girl under 12) is equivalent to an offence against section 132(3) of that Act (indecent act on child under 12):
 - (b) an offence against the former section 139 of the Crimes Act 1961 (indecent act between woman and girl) is equivalent to an offence against section 134(3) of that Act (indecent act on young person under 16):
 - (c) an offence against the former section 140 of the Crimes Act 1961 (indecenty with boy under 12) is equivalent to an offence against section 132(3) of that Act (indecent act on child under 12):
 - (d) an offence against the former section 140A of the Crimes Act 1961 (indecenty with boy between 12 and 16) is equivalent to an offence against section 134(3) of that Act (indecent act on young person under 16):
 - (e) an offence against the former section 142 of the Crimes Act 1961 (anal intercourse)
 - (i) if the person upon whom the act of anal intercourse was committed was under the age of 12 years when the act was committed, is equivalent to an offence against section 132(1) of that Act (sexual connection with child under 12); and
 - (ii) if the person upon whom the act of anal intercourse was committed was of or over the age of 12 years when the act was committed, is equivalent to an offence against section 134(1) of that Act (sexual connection with young person under 16).

Summary Proceedings Act 1957 (1957 No 87)

Omit from section 185B(1)(d) the words “inducing sexual connection by coercion” and substitute the words “sexual connection with consent induced by certain threats”.

Omit from Part 1 of Schedule 1 the items relating to sections 130 to 142 of the Crimes Act 1961 and substitute:

130(2)	Incest
131(1)	Sexual connection with dependent family member
131(2)	Attempted sexual connection with dependent family member
131(3)	Indecent act with dependent family member
131B(1)	Meeting young person under 16 following sexual grooming, etc
132(2)	Attempted sexual connection with child under 12
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
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 1: amended, on 17 August 2011, pursuant to section 8(2) of the Adoption Amendment Act 2011 (2011 No 60).

Schedule 1: amended, on 17 August 2011, pursuant to section 8(3) of the Adoption Amendment Act 2011 (2011 No 60).

Schedule 2 Consequential repeals

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Age of Majority Act 1970 (1970 No 137)

So much of the Schedule as relates to the principal Act.

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)

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.

Contents

- 1 General
- 2 About this eprint
- 3 List of amendments incorporated in this eprint (most recent first)

Notes**1 General**

This is an eprint of the Crimes Amendment Act 2005. It incorporates all the amendments to the Crimes Amendment Act 2005 as at 17 August 2011. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

**3 List of amendments incorporated in this eprint
(most recent first)**

Adoption Amendment Act 2011 (2011 No 60): section 8

Crimes Amendment Act (No 2) 2008 (2008 No 37): section 18(2)