

# House of Representatives

# Supplementary Order Paper

Thursday, 26 March 2015

## Objectionable Publications and Indecency Legislation Bill

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### *Proposed amendments*

Hon Amy Adams, in Committee, to move the following amendments:

*Clause 7: new section 132B(1)(b)*

In *clause 7*, replace *new section 132B(1)(b)* (page 3, lines 31 to 33) with:

“(b) before the repeat offence was committed and the conviction for it was entered, had both committed and been convicted of 1 or more specified publications offences committed before or after that commencement.

*Part 2: new subpart 1 heading*

After the *Part 2 heading* (page 6, after line 2), insert:

Subpart 1—Amendments to Crimes Act 1961

*Part 2: clause 11*

In *clause 11*, replace “**Part**” (page 6, line 4) with “**subpart**”.

*Part 2: new clause 14 and new subparts 2 and 3*

After *clause 13* (page 7, after line 16), insert:

**14 New section 144AB inserted (Party or accessory liability for sexual acts with children or young people outside New Zealand done by, or involving, foreigner principal parties)**

After section 144A, insert:

“**144AB Party or accessory liability for sexual acts with children or young people outside New Zealand done by, or involving, foreigner principal parties**

“(1) A New Zealander is a party under section 66, an accessory after the fact, or both, to a New Zealand sexual offence with a child or young person outside New Zealand if,—

- “(a) a sexual act with a child or young person is done or to be done, outside New Zealand, by 1 or more principal parties who are foreigners; and
  - “(b) the New Zealander does, outside New Zealand, an act with, or in respect of, the act done or to be done by the 1 or more foreigners; and
  - “(c) had both acts been done in New Zealand, the New Zealander would be a party under section 66, an accessory after the fact, or both, to a sexual offence with a child or young person.
- “(2) In this section,—
- “**accessory after the fact** means an accessory after the fact under sections 71 and 312
  - “**foreigner** means a person who—
    - “(a) is not a New Zealand citizen; and
    - “(b) is not a person ordinarily resident in New Zealand
  - “**New Zealand sexual offence with a child or young person outside New Zealand** means an offence against section 144A(1)(a), (b), or (c)
  - “**New Zealander** means a person who—
    - “(a) is a New Zealand citizen; or
    - “(b) is a person ordinarily resident in New Zealand
  - “**party under section 66** includes a party under that section as extended by section 70
  - “**sexual act with a child or young person** means an act to which section 144A(2), (3), or (4) applies
  - “**sexual offence with a child or young person** means an offence against a section specified in section 144A(2)(a), (b), or (c), (3)(a), (b), or (c), or (4).
- “(3) This section does not limit or affect section 69(3) or 144C (whether used with, or apart from, section 66).
- “Compare: Criminal Code Act 1995 Division 272 (Aust); Sexual Offences Act 2003 s 72, Schedule 2 (UK)”.

## Subpart 2—Amendments to Accident Compensation Act 2001

### 15 **Principal Act**

This **subpart** amends the Accident Compensation Act 2001 (the **principal Act**).

### 16 **Schedule 3 amended**

- (1) In Schedule 3, before the item relating to section 128B(1) of the Crimes Act 1961, insert:

- 124A** Indecent communication with young person under 16
- (2) In Schedule 3, after the item relating to section 131(3) of the Crimes Act 1961, insert:
- 131B Meeting young person following sexual grooming, etc

### Subpart 3—Amendment to Vulnerable Children Act 2014

- 17 Principal Act**  
This **subpart** amends the Vulnerable Children Act 2014 (the **principal Act**).
- 18 Schedule 2 amended**  
In Schedule 2, after clause 1(2), insert:  
“(2A) **section 124A** (indecent communication with young person under 16):”.

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### Explanatory note

This Supplementary Order Paper sets out amendments to the Objectionable Publications and Indecency Legislation Bill. It replaces Supplementary Order Paper No 484 (released on 30 July 2014)—the only substantive difference is *new clause 14*, to insert *new section 144AB* of the Crimes Act 1961. It is, however, also intended to operate together with break-up Supplementary Order Paper No 483 (also released on 30 July 2014).

*Subpart 1 of Part 1* is amended to make clearer the application of the presumption of imprisonment for repeat offenders (*new section 132B*, inserted by *clause 7*). The presumption is to apply to an offender convicted of, and to be sentenced in respect of, a specified publications offence (the **repeat offence**). But the presumption is to apply to the offender only if, before he or she committed and was convicted of the repeat offence, he or she had both committed, and been convicted of, 1 or more specified publications offences. The repeat offence must therefore follow both commission of, and a conviction for, an earlier similar offence (as suggested by *Stewart v Transport Department* [1964] NZLR 860 (SC) at 862 per Hardie Boys J; *R v Wain* [1984] 1 NZLR 363 (CA) at 364 per Hardie Boys J; and *Roe v D’Costa* [2014] WASCA 118 at [28] and [40] per Mazza JA). *New section 132B* is accordingly directed more clearly, in line with the policy intention, only to identifiably persistent repeat offenders.

*New clause 14* (in *new subpart 1 of Part 2*) relates to the Crimes Act 1961 and, in particular, to section 144A (sexual conduct with children and young people outside New Zealand). *New clause 14* inserts *new section 144AB* to make available party or accessory liability for an offence against section 144A even though, for the acts concerned, the principal (or a joint principal party) is a foreigner

not liable under New Zealand law. The need for an amendment clarifying party liability was identified in the case of *LM v R* [2015] 1 NZLR 23 (SCNZ). Judgment was given in that case on 13 August 2014. The reasons for judgment of the majority (Elias CJ, McGrath and William Young JJ) note (at [25]) that corresponding Australian and United Kingdom provisions address expressly party liability, and suggest that “legislative reconsideration of s 144A is warranted”. Glazebrook and Arnold JJ note (at [40]) that “there is no logical reason why party liability would ensue where the principal is a New Zealander but not where the principal is a foreigner. The acts of the New Zealand person aiding or abetting or encouraging are the same in each case.” *New section 144AB* does not alter the law (as shown in *LM v R* [2015] 1 NZLR 23 (SCNZ), and *Y v R* [2014] 1 NZLR 724 (SCNZ)) on when a New Zealander is liable as a (single or multiple) principal offender (not as a secondary party), despite an absence of physical contact with the complainant, because the New Zealander has even so performed (as a single or multiple principal offender) an indecent act “with or on” the complainant under sections 2(1B) and 132(3) (doing an indecent act on a child under 12) of the Crimes Act 1961.

*New subpart 2 of Part 2* amends the Accident Compensation Act 2001. Section 21 of that Act specifies requirements for when a person has cover for a personal injury that is a mental injury caused by certain criminal acts. The requirements include (section 21(1)(c) and (2)(c)) that the mental injury is caused by an act within the description of an offence listed in Schedule 3 of that Act. Schedule 3 is amended so it also includes references to—

- the new offence of indecent communication with a young person (under 16 years) under *new section 124A* of the Crimes Act 1961, which is inserted by *clause 13*; and
- the existing, but related, sexual grooming offence under section 131B of the Crimes Act 1961.

*New subpart 3 of Part 2* amends the Vulnerable Children Act 2014. The Act’s children’s worker safety checking provisions prohibit specified organisations from employing or engaging as a core worker a person convicted of a specified offence, unless the person holds an exemption from the prohibition (grantable only if the person would not pose an undue risk to children’s safety). The amendment ensures a specified offence, for the purposes of those provisions, includes the new offence of indecent communication with a young person (under 16 years) under *new section 124A* of the Crimes Act 1961.

### **Departmental disclosure statement**

The Ministry of Justice considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

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