



ANALYSIS

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1995, No. 49

An Act to amend the Crimes Act 1961

[2 August 1995]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Crimes Amendment Act 1995, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the 1st day of September 1995.

(3) Section 3 of this Act shall come into force on the 1st day of January 1996.

2. New heading and sections inserted—The principal Act is hereby amended by inserting, after section 144, the following heading and sections:

“Sexual Offences Outside New Zealand

“144A. Sexual conduct with children outside New Zealand—(1) Every one commits an offence who, being a New Zealand citizen or a person ordinarily resident in New Zealand, does, outside New Zealand, any act to or in relation to any child under the age of 16 years if that act would, if done in New Zealand, constitute an offence against any of the following provisions of this Act:

“(a) Section 132 (1) (sexual intercourse with girl under 12):

“(b) Section 132 (2) (attempted sexual intercourse with girl under 12):

“(c) Section 133 (indecency with girl under 12):

“(d) Section 134 (1) (sexual intercourse with girl between 12 and 16):

“(e) Section 134 (2) (indecency with girl between 12 and 16):

“(f) Section 139 (indecent act between girl and woman):

“(g) Section 140 (indecency with boy under 12):

“(h) Section 140A (indecency with boy between 12 and 16):

“(i) Section 142 (anal intercourse).

“(2) Every one who commits an offence against this section in respect of any provision specified in subsection (1) of this section is liable to the same penalty to which he or she would have been liable had he or she been convicted of an offence against that provision.

“(3) Where, in respect of any provision specified in subsection (1) of this section (in this subsection referred to as the specified provision), any provision of this Act specifies—

“(a) Circumstances that constitute a defence to a charge under the specified provision; or

“(b) Circumstances that do not constitute a defence to a charge under the specified provision; or

“(c) Circumstances in which the person upon or with whom an offence against the specified provision is committed may not be charged with an offence against the specified provision; or

“(d) Any time limit on the commencement of proceedings for an offence against the specified provision,—
that provision shall apply in respect of the commencement of proceedings for an offence against this section in respect of the specified provision and in respect of any charge under this section in respect of the specified provision.

“144B. Consent of Attorney-General required—(1) No information shall be laid for an offence against section 144A of this Act except with the consent of the Attorney-General.

“(2) A person who is alleged to have committed such an offence may be arrested, or a warrant for the arrest of the person may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the laying of an information for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

“(3) The Attorney-General may, before deciding whether or not to give his or her consent under subsection (1) of this section, make such inquiries as he or she thinks fit.

“144c. **Organising or promoting child sex tours—**
 (1) Every one is liable to imprisonment for a term not exceeding 7 years who—

“(a) Makes or organises any travel arrangements for or on behalf of any other person with the intention of facilitating the commission by that other person of an offence against section 144A of this Act, whether or not such an offence is actually committed by that other person; or

“(b) Transports any other person to a place outside New Zealand with the intention of facilitating the commission by that other person of an offence against section 144A of this Act, whether or not such an offence is actually committed by that other person; or

“(c) Prints or publishes any information that is intended to promote conduct that would constitute an offence against section 144A of this Act, or to assist any other person to engage in such conduct.

“(2) For the purposes of this section,—

“(a) The making or organising of travel arrangements includes, but is not limited to,—

“(i) The purchase or reservation of tickets for travel to a country outside New Zealand:

“(ii) The purchase or reservation of accommodation in a country outside New Zealand:

“(b) The publication of information means publication of information by any means, whether by written, electronic, or other form of communication; and includes the distribution of information.”

3. New heading and sections inserted—The principal Act is hereby amended by inserting, after section 204, the following heading and sections:

“Female Genital Mutilation

“204A. Female genital mutilation—(1) For the purposes of this section,—

“‘Female genital mutilation’ means the excision, infibulation, or mutilation of the whole or part of the labia majora, labia minora, or clitoris of any person:

“‘Registered midwife’ means a person who is registered as a midwife under the Nurses Act 1977:

“‘Sexual reassignment procedure’ means any surgical procedure that is performed for the purposes of altering (whether wholly or partly) the genital appearance of a person to the genital appearance of a person of the opposite sex:

“‘Trainee health professional’ means any person who is receiving training or gaining experience under the supervision of—

“(a) A medical practitioner for the purpose of gaining registration as a medical practitioner; or

“(b) A registered midwife for the purpose of gaining registration as a registered midwife.

“(2) Subject to subsection (3) of this section, every one is liable to imprisonment for a term not exceeding 7 years who performs, or causes to be performed, on any other person, any act involving female genital mutilation.

“(3) Nothing in subsection (2) of this section applies in respect of—

“(a) Any medical or surgical procedure (including a sexual reassignment procedure) that is performed on any person—

“(i) For the benefit of that person’s physical or mental health; and

“(ii) By a medical practitioner:

“(b) Any medical or surgical procedure that is performed on any person—

“(i) While that person is in labour or immediately after that person gives birth; and

“(ii) For the benefit of that person’s health or the health of the child; and

“(iii) By a medical practitioner or a registered midwife or a trainee health professional, or by any other person in any case where the case is urgent

and no medical practitioner or registered midwife or trainee health professional is available.

“(4) In determining, for the purposes of subsection (3) of this section, whether or not any medical or surgical procedure is performed on any person for the benefit of that person’s physical or mental health, no account shall be taken of the effect on that person of any belief on the part of that person or any other person that the procedure is necessary or desirable as, or as part of, a cultural, religious, or other custom or practice.

“(5) Nothing in subsection (3) of this section limits or affects any enactment or rule of law relating to consent to any medical or surgical procedure or treatment.

“(6) It is no defence to a charge under this section that the person on whom the act involving female genital mutilation was performed consented to that act, or that the person charged believed that such consent had been given.

“(7) No person shall be charged as a party to an offence committed upon her against this section.

“204B. **Further offences relating to female genital mutilation**—(1) Every one is liable to imprisonment for a term not exceeding 7 years who, with intent that there be done, outside New Zealand, to or in relation to any child under the age of 17 years (being a child who is a New Zealand citizen or is ordinarily resident in New Zealand), any act which, if done in New Zealand, would be an offence against section 204A of this Act,—

“(a) Causes that child to be sent or taken out of New Zealand; or

“(b) Makes any arrangements for the purposes of causing that child to be sent or taken out of New Zealand.

“(2) Every one is liable to imprisonment for a term not exceeding 7 years who, in New Zealand, aids, incites, counsels, or procures the doing, outside New Zealand, in relation to any person who is a New Zealand citizen or is ordinarily resident in New Zealand, of any act which, if done in New Zealand, would be an offence against section 204A of this Act, whether or not the act is in fact done.

“(3) Every one is liable to imprisonment for a term not exceeding 7 years who, in New Zealand, incites, counsels, procures, or induces any person who is a New Zealand citizen or is ordinarily resident in New Zealand—

“(a) To submit, outside New Zealand, to any act which, if done in New Zealand, would be an offence against section 204A of this Act; or

“(b) To acquiesce in the doing, outside New Zealand, on that person, of any such act; or

“(c) To permit any such act to be done, outside New Zealand, on that person,—

whether or not, in any case, the act is in fact done.

“(4) It is no defence to a charge under subsection (2) or subsection (3) of this section that the person on whom the act was done consented to that act, or that the person charged believed that such consent had been given.

“(5) No person shall be charged as a party to an offence committed in relation to her against subsection (2) or subsection (3) of this section.”

4. Theft by husband or wife—(1) The principal Act is hereby amended by repealing section 226, and substituting the following section:

“226. A person may be convicted of theft of another person’s property notwithstanding that those persons were married to each other at the time of the theft.”

(2) Section 259 of the principal Act is hereby consequentially repealed.

(3) Section 11 (3) of the Misuse of Drugs Act 1975 is hereby consequentially amended by omitting the expression “259.”.

5. New heading and sections inserted—The principal Act is hereby amended by inserting, after section 257, the following heading and sections:

“Money Laundering

“257A. **Money laundering**—(1) For the purposes of this section,—

“‘Conceal’, in relation to property, means to conceal or disguise the property; and, without limiting the generality of the foregoing, includes—

“(a) To convert the property from one form to another:

“(b) To conceal or disguise the nature, source, location, disposition, or ownership of the property or of any interest in the property:

“‘Deal with’, in relation to property, means to deal with the property in any manner and by any means; and,

without limiting the generality of the foregoing, includes—

“(a) To dispose of the property, whether by way of sale, purchase, gift, or otherwise:

“(b) To transfer possession of the property:

“(c) To bring the property into New Zealand:

“(d) To remove the property from New Zealand:

“‘Interest’, in relation to property, means—

“(a) A legal or equitable estate or interest in the property; or

“(b) A right, power, or privilege in connection with the property:

“‘Proceeds’, in relation to a serious offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence:

“‘Property’ means real or personal property of any description, whether situated in New Zealand or elsewhere and whether tangible or intangible; and includes an interest in any such real or personal property:

“‘Serious offence’ means an offence punishable by imprisonment for a term of 5 years or more; and includes any act, wherever committed, which if committed in New Zealand would constitute an offence punishable by imprisonment for a term of 5 years or more.

“(2) Subject to subsection (6) of this section, every one is liable to imprisonment for a term not exceeding 7 years who, in respect of any property that is the proceeds of a serious offence, engages in a money laundering transaction, knowing or believing that all or part of the property is the proceeds of any serious offence.

“(3) Subject to subsection (6) of this section, every one is liable to imprisonment for a term not exceeding 5 years who obtains or has in his or her possession any property (being property that is the proceeds of a serious offence committed by another person)—

“(a) With intent to engage in a money laundering transaction in respect of that property; and

“(b) Knowing or believing that all or part of the property is the proceeds of any serious offence.

“(4) For the purposes of this section, a person engages in a money laundering transaction if that person—

“(a) Deals with any property; or

“(b) Assists any other person, whether directly or indirectly, to deal with any property—
for the purpose of—

“(c) Concealing that property; or

“(d) Enabling another person to conceal that property.

“(5) In any prosecution for an offence against subsection (2) or subsection (3) of this section,—

“(a) It shall not be necessary for the prosecution to prove that the accused knew or believed that the property was the proceeds of a particular serious offence or a particular class of serious offence:

“(b) It is no defence that the accused believed any property to be the proceeds of a particular serious offence, when in fact the property was the proceeds of another serious offence.

“(6) It is a defence to a charge under this section if the person charged proves—

“(a) That the act to which the charge relates was done by that person, in good faith, for the purpose of or in connection with—

“(i) The enforcement or intended enforcement of this section or any other provision of this Act or of any other enactment relating to a serious offence; or

“(ii) The enforcement or intended enforcement of the Proceeds of Crime Act 1991; or

“(b) In any case where—

“(i) Any property is alleged to be the proceeds of a serious offence; and

“(ii) The act that is alleged to constitute that serious offence was committed outside New Zealand,—

that the act was not, at the time of its commission, an offence under the law of the place where the act was done.

“(7) Nothing in this section limits or restricts the operation of any other provision of this Act or any other enactment.

“257B. Immunity from liability for disclosure of information—Where—

“(a) Any person does any act that, apart from subsection (6) (a) of section 257A of this Act, would constitute, or the person believes would constitute, an offence against subsection (2) or subsection (3) of that section; and

“(b) In respect of the doing of that act, that person would have, by virtue of subsection (6) (a) of that section, a defence to a charge under that section; and

“(c) That person discloses, to any member of the Police, any information relating to a money laundering transaction (within the meaning of subsection (4) of that section), being a money laundering transaction that constitutes (in whole or in part), or is connected with or related to, the act referred to in paragraph (a) of this section; and

“(d) That information is so disclosed, in good faith, for the purpose of or in connection with the enforcement or intended enforcement of any enactment or provision referred to in section 257A (6) (a) of this Act; and

“(e) That person is otherwise under any obligation (whether arising by virtue of any enactment or any rule of law or otherwise howsoever) to maintain secrecy in relation to, or not to disclose, that information,—

then, notwithstanding that the disclosure would otherwise constitute a breach of that obligation of secrecy or non-disclosure, the disclosure by that person, to that member of the Police, of that information is not a breach of that obligation of secrecy or non-disclosure or (where applicable) of any enactment by which that obligation is imposed.”

6. Money launderers—The principal Act is hereby amended by inserting, immediately after section 344, the following section:

“344AA. (1) Every one charged with an offence (in this section referred to as a ‘money laundering offence’) against subsection (2) or subsection (3) of section 257A of this Act (which relates to money laundering) in respect of any property that is the proceeds of a serious offence—

“(a) May be indicted whether or not the person who committed that serious offence has been indicted or convicted or is amenable to justice; and

“(b) Either—

“(i) May be indicted alone in respect of that money laundering offence; or

“(ii) May be charged jointly with that other person in one indictment in which each is charged in a separate count with the respective offence alleged to have been committed by that person, in which case those persons may be tried together.

“(2) Where any property is the proceeds of a serious offence, any number of persons who are alleged to have committed, at different times, a money laundering offence in respect of that property, or any part or parts of that property,—

“(a) May be charged jointly in one indictment in which each is charged in a separate count with the respective offence alleged to have been committed by that person; and

“(b) May be tried together.

“(3) For the purposes of this section, the terms ‘proceeds’, ‘property’, and ‘serious offence’ have the same meanings as they have in section 257A of this Act.”

7. Special provisions in cases of sexual nature—

(1) Section 375A of the principal Act (as inserted by section 5 of the Crimes Amendment Act (No. 3) 1985) is hereby amended by inserting in subsection (1) (as substituted by section 2 (1) of the Crimes Amendment Act (No. 2) 1989), after paragraph (a), the following paragraph:

“(aa) Any offence against section 144A of this Act.”

(2) Section 375A (1) of the principal Act (as so substituted) is hereby amended by inserting in paragraph (c), after the expression “paragraph (a) or”, the expression “paragraph (aa) or”.

8. Amendments to Evidence Act 1908—(1) Section 23A (1) of the Evidence Act 1908 (as substituted by section 2 (1) of the Evidence Amendment Act 1989) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Any offence against section 144A of the Crimes Act 1961; or”.

(2) Section 23A (1) of the Evidence Act 1908 (as so substituted) is hereby amended by inserting in paragraph (c), after the expression “paragraph (a) or”, the expression “paragraph (aa) or”.

(3) Section 23AB of the Evidence Act 1908 (as inserted by section 3 of the Evidence Amendment Act (No. 2) 1985) is hereby amended by omitting the expression “144”, and substituting the expression “144A”.

(4) Section 23AC of the Evidence Act 1908 (as so inserted) is hereby amended by omitting the expression “144”, and substituting the expression “144A”.

(5) Section 23c of the Evidence Act 1908 (as inserted by section 3 of the Evidence Amendment Act 1989) is hereby

amended by inserting, after paragraph (a) (i), the following subparagraph:

“(ia) Any offence against section 144A of the Crimes Act 1961; or”.

(6) Section 23c of the Evidence Act 1908 (as so inserted) is hereby amended by inserting in paragraph (a) (iii), after the expression “subparagraph (i) or”, the expression “subparagraph (ia) or”.

9. Amendment to District Courts Act 1947—Schedule 1A to the District Courts Act 1947 (as inserted by section 20 of the District Courts Amendment Act 1991) is hereby amended by inserting in Part II, in their appropriate numerical order, the following items:

“144A ... Sexual conduct with children outside New Zealand
“144c ... Organising or promoting child sex tours”.

10. Amendments to Summary Proceedings Act 1957—

(1) Section 185A of the Summary Proceedings Act 1957 (as substituted by section 4 of the Summary Proceedings Amendment Act (No. 2) 1989) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Any offence against section 144A of the Crimes Act 1961.”.

(2) Section 185A of the Summary Proceedings Act 1957 (as so substituted) is hereby amended by inserting in paragraph (c), after the expression “paragraph (a) or”, the expression “paragraph (aa) or”.

(3) Part I of the First Schedule to the Summary Proceedings Act 1957 is hereby amended by inserting, in their appropriate numerical order, the following items:

“204A Female genital mutilation
“204B Further offences relating to female genital mutilation
“257A Money laundering”.

11. Amendment to Extradition Act 1965—Part I of the First Schedule to the Extradition Act 1965 is hereby amended by inserting, in their appropriate numerical order, the following items:

“144A	Sexual conduct with children outside New Zealand
“144c	
“204A	
“204B	
“257A	

Organising or promoting child sex tours
Female genital mutilation
Further offences relating to female genital mutilation
Money laundering”.

12. Amendment to Criminal Justice Act 1985—
Section 139(1) of the Criminal Justice Act 1985 is hereby amended by inserting, after the expression “Crimes Act 1961,”, the expression “or in respect of an offence against section 144A of that Act,”.

This Act is administered in the Ministry of Justice.
