



ANALYSIS

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1986, No 33

An Act to amend the Crimes Act 1961 by removing criminal sanctions against consensual homosexual conduct between males, and by consequentially amending the law relating to consensual anal intercourse
[11 July 1986]

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

1. Short Title and commencement—(1) This Act may be cited as the Homosexual Law Reform Act 1986.

(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

Amendments of Crimes Act 1961

2. Act to be read with Crimes Act 1961—This Act shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as the principal Act).

3. Two new sections (relating to indecency with boys) substituted—The principal Act is hereby amended by repealing section 140, and substituting the following sections:

“140. Indecency with boy under 12—(1) Every one is liable to imprisonment for a term not exceeding 10 years who, being a male,—

“(a) Indecently assaults any boy under the age of 12 years; or

“(b) Does any indecent act with or upon any boy under the age of 12 years; or

“(c) Induces or permits any boy under the age of 12 years to do any indecent act with or upon him.

“(2) It is no defence to a charge under this section that the boy consented, or that the person charged believed that the boy was of or over the age of 12 years.

“(3) The boy shall not be charged as a party to an offence committed upon or with him against this section.

“140A. Indecency with boy between 12 and 16—(1) Every one is liable to imprisonment for a term not exceeding 7 years who, being a male,—

“(a) Indecently assaults any boy of or over the age of 12 years and under the age of 16 years; or

“(b) Does any indecent act with or upon any such boy; or

“(c) Induces or permits any such boy to do any indecent act with or upon him.

“(2) It is a defence to a charge under this section if the person charged proves that the boy consented and that he is younger than the boy:

“Provided that proof of the said facts shall not be a defence if it is proved that such consent was obtained by a false and fraudulent representation as to the nature and quality of the act.

“(3) It is a defence to a charge under this section if the person charged proves that the boy consented, that he was under the age of 21 years at the time of the commission of the act, and that he had reasonable cause to believe, and did believe, that the boy was of or over the age of 16 years:

“Provided that proof of the said facts shall not be a defence if it is proved that the consent was obtained by a false and fraudulent representation as to the nature and quality of the act.

“(4) Except as provided in this section, it is no defence to a charge under this section that the boy consented, or that the person charged believed that the boy was of or over the age of 16 years.

“(5) The boy shall not be charged as a party to an offence committed upon or with him against this section.

“(6) No one shall be prosecuted for any offence against this section, except under paragraph (a) of subsection (1) thereof, unless the prosecution is commenced within 12 months from the time the offence was committed.”

4. Indecent assault on man or boy—The principal Act is hereby amended by repealing section 141, and substituting the following section:

“141. Every one is liable to imprisonment for a term not exceeding 7 years who, being a male,—

“(a) Indecently assaults any man or boy of or over the age of 16 years; or

“(b) Does anything to any man or boy of or over the age of 16 years, with his consent, which but for such consent would have been an indecent assault, such consent being obtained by a false and fraudulent representation as to the nature and quality of the act.”

5. Anal intercourse—The principal Act is hereby amended by repealing section 142, and substituting the following section:

“142. (1) Every one commits an offence who commits an act of anal intercourse on any person—

“(a) Who is under the age of 16 years; or

“(b) Who is severely subnormal, and the person committing the act knows or has good reason to believe that the person upon whom the act is committed is severely subnormal.

“(2) For the purposes of subsection (1) (b) of this section, a person is severely subnormal if that person is mentally subnormal, within the meaning of the Mental Health Act 1969, to the extent that the person is incapable of living an independent life or of guarding himself or herself against serious exploitation or common physical dangers.

“(3) Every one who commits an offence against this section is liable to imprisonment,—

“(a) In any case where the person upon whom the act was committed was, at the time of the commission of the act, under the age of 12 years, for a term not exceeding 14 years; or

“(b) In any other case, for a term not exceeding 7 years.

“(4) An offence against this section is complete upon penetration.

“(5) The person upon whom the act of anal intercourse is committed shall not be charged with being a party to the offence.

“(6) Subject to subsection (9) of this section, it is a defence to a charge under subsection (1) (a) of this section if the person charged proves that the person upon whom the act of anal intercourse was committed consented and that he is younger than that person:

“Provided that proof of the said facts shall not be a defence if it is proved that such consent was obtained by a false and fraudulent representation as to the nature and quality of the act.

“(7) Subject to subsection (9) of this section, it is a defence to a charge under subsection (1) (a) of this section if the person charged proves that the person upon whom the act of anal intercourse was committed consented, that the person charged was under the age of 21 years at the time of the commission of the act, and that he had reasonable cause to believe, and did believe, that the person upon whom the act was committed was of or over the age of 16 years:

“Provided that proof of the said facts shall not be a defence if it is proved that the consent was obtained by a false and fraudulent representation as to the nature and quality of the act.

“(8) Subject to subsection (9) of this section, no one shall be prosecuted for any offence against this section unless the prosecution is commenced within 12 months from the time when the offence was committed.

“(9) The provisions of subsections (6), (7), and (8) of this section shall not apply where the person upon whom the act of anal intercourse was committed was under the age of 12 years at the time of the commission of the act.

“(10) Except as provided in this section, it is no defence to a charge under this section that the person upon whom the act of anal intercourse was committed consented, or that the person charged believed that the person was of or over the age of 16 years.”

6. Keeping place of resort for homosexual acts—

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

(2) Section 147 (2) of the principal Act is hereby amended by omitting the word “woman”, and substituting the word “person”.

7. Past offences—(1) No person shall be liable to be convicted of an offence against any of sections 140, 141, or 142 of the principal Act committed before the commencement of this Act if the act that constituted the offence does not constitute an offence after the commencement of this Act.

(2) Subject to subsection (1) of this section, where, before the commencement of this Act, any person has been charged with any offence against section 140 or section 141 or section 142 of the principal Act, the proceedings in respect of the charge shall continue as if this Act had not been passed, except that—

- (a) Where the person is charged with an offence against section 141 of the principal Act and the charge relates to a boy of or over the age of 12 years and under the age of 16 years, he shall be entitled to raise any defence that he would have been entitled to raise if the charge had been brought under section 140A of the principal Act (as substituted by section 3 of this Act); and
- (b) Where the person is charged with an offence against section 142 of the principal Act, he shall be entitled to raise any defence that he would have been entitled to raise if the charge had been brought under section 142 of the principal Act (as substituted by section 5 of this Act).

8. Savings in respect of Armed Forces—(1) Nothing in this Act shall affect the interpretation or application of section 42 (b) of the Armed Forces Discipline Act 1971 (which relates to behaving in a disgraceful and indecent manner), and any behaviour that would have constituted an offence against that provision before the passing of this Act shall constitute an offence against that provision notwithstanding the passing of this Act.

(2) Every person who commits any act that, but for the passing of this Act, would have constituted a civil offence within the meaning of section 74 of the Armed Forces Discipline Act 1971 shall be guilty of an offence against that section notwithstanding the passing of this Act, and shall be liable to the same punishment as that person would have been liable to under subsection (2) of that section had this Act not been passed:

Provided that, in the case of an act that, but for the passing of this Act, would have constituted a crime against paragraph (b) or paragraph (c) of section 141 (1), or section 142, of the principal Act, the maximum punishment that may be imposed shall be 3 years' imprisonment.